17-478

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 209.

SAMUEL T. WILLIAMS, APPELLANT,

vs.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON, AND GEORGE J. SEUFFERLE, AS JACKSON, BROTHER & CO.

FILED APRIL 9, 1880.

No. 482.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON, AND GEORGE J. SEUFFERLE, AS JACKSON, BROTHER & CO., APPELLANTS,

vs.

WILLIAM STICKNEY.

FILED FEBRUARY 4, 1881.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON, and George J. Seufferle, trading under the firm name of Jackson, Brother & Co.,
vs.
ELI S. BLACKWOOD, CHARLES T. DAVIS AND Ida S. Davis, his wife; Edwin J. Sweet and Addie M. Sweet, his wife; Augustus Davis, Robert K. Elliott, Mahlon Ashford, J. Stanley Jones, William Stickney, Richard E. Pairo, Samuel T. Williams, and the Citizens' National Bank of Washington City, D. C.

No. 5950. Equity docket, 17.

To the supreme court of the District of Columbia, sitting in equity:

The complainants state as follows:

First. That they are copartners, trading and doing business in the city of Washington, District of Columbia, under the firm name of Jackson, Brother & Co., that they reside in said city and bring this suit in their own right.

Second. The defendants are all residents of the said city of Washington. The defendant Ida S. Davis is the wife of the defendant Charles T. Davis, and the defendant Addie M. Sweet is the wife of the defendant Edwin J. Sweet.

The defendants Eli S. Blackwood, Ida S. Davis, Richard E. Pairo, The Citizens' National Bank of Washington, D. C., Edwin J. Sweet, Addie M. Sweet, and Samuel T. Williams are sued in their own right.

The defendants, Charles T. Davis, Augustus Davis, J. Stanley Jones, and William Stickney are sued as well in their own right as trustees, as hereinafter stated.

The defendants Robert K. Elliott and Mahlon Ashford are sued as trustees as will hereinafter more particularly appear.

Third. On or about the first day of January, A. D. 1875, the defendants Addie D. Sweet and her husband, the said Edwin J. Sweet, by their deed of that date, conveyed the lot numbered forty-nine (49), in Augustus Davis' subdivision of the lot eight, in the square numbered five hundred and thirteen (513), situate and lying in the said city of Washington, together with the improvements thereon and the appurtenances thereto belonging, to the defendants Charles T. Davis and William Stickney,
2 and their heirs, as joint tenants, in trust, however, to secure the payment of three promissory notes made and delivered by the said Edwin J. and Addie M. Sweet, all of even date with said trust deed, one for the sum of $1,833.33, payable in two years after date; one for a like sum, payable in three years after date; and the other for the sum of $2,500, payable in three years after date. All of said notes were payable to the order of the defendant Augustus Davis, with interest at eight per cent. per annum until paid, payable semi-annually. And under the express terms of the said trust deed it was provided that the defendants Edwin J. and Addie M. Sweet, their heirs and assigns, should be permitted to use, occupy, and enjoy the said property and the rents, issues, and

profits thereof, to take, have, and apply to and for their sole use and benefit until default be made in the payment of said notes, or any of them, or any proper cost, charge, commission, half commission, or expense in and about the same. And upon the full payment of all of said notes and the interest thereon, and all proper costs, charges, commissions, half commissions, and expenses, at any time before the sale therein provided for, to release and reconvey the said described premises unto the said Addie M. Sweet, her heirs or assigns, at her or their cost. The said trust deed did further provide for a sale of said premises upon default in the payment of said notes or any of them, or any instalment of interest thereon, and a distribution of the proceeds of sale, all of which will more fully and at large appear, reference being had to said deed, duly recorded in liber No. 776, at folio 48, one of the land records for said District, and to a copy thereof filed herewith, marked Complainants' Exhibit No. 1, and which copy and record the complainants make a part of this bill and ask leave to read at the hearing of this cause. Complainants show and aver that the defendants Charles T. Davis and William Stickney, as trustees aforesaid, could release said trust from the operation of the lien on said property thereby created, only upon the full payment of all said promissory notes and the interest thereon, and the costs, charges, commissions, half commissions, and expenses, as therein provided, and upon no other conditions whatever.

Fourth. All of said promissory notes were duly endorsed before their maturity by the payee thereof in blank and shortly after their date, and long before the maturity of either or any of them were discounted by, and duly came into the hands of, these complainants, in the ordinary course of business, for full value paid to the defendant Charles T. Davis, and these complainants have since such discount been in the exclusive and uninterrupted possession of all of said notes; and since the same came into their hands as aforesaid, they have been and now are the holders and bona fide owners thereof. That no portion of the principal of any of said notes has been paid, but the interest on all of them at the rate aforesaid has been paid to July 1, 1876, since which time no interest thereon whatever has been paid. Copies of said notes and of the endorsements thereon are herewith filed as a part hereof, marked Complainants' Exhibit No. 2.

3 Fifth. That the defendants Charles T. and Augustus Davis and Edwin J. Sweet and Addie M. Sweet, his wife, being then insolvent, and combining and confederating together, and in collusion one with the other, and contriving how to wrong, injure, and defraud these complainants out of their security under said trust deed, did prevail, through their misrepresentation and falsehoods, on the defendant Stickney to join with the said Charles T. Davis in the execution and delivery of a certain pretended release of said property from the operation of said trust, which release bears date September 15, 1876, and was acknowledged by said Stickney and Charles T. Davis before one Thomas B. Jones, a notary public for said District, on the 19th of September, 1876, and was recorded among the land records for said District on the 28th of the same month in liber No. 834, at folio 18, one of said land records. These complainants charge and aver that the execution and delivery of said pretended release was without their knowledge or consent, and wholly unauthorized by them as the then holders of said notes; that at the date of its execu-

tion and delivery none of said notes were due, and they were entirely ignorant of the execution of such release, until within some few weeks since, and they claim and insist that the execution thereof by the said Stickney being fraudulently obtained, and both of the said trustees being without power or authority to execute the same, the debt and interest not being paid, the same is void as against these complainants and should not operate to discharge the security of their said trust.

Sixth. Complainants further show that on the day preceding the date the said release was recorded as aforesaid, to wit, on the 27th day of September, 1876, the said defendants Edwin J. and Addie M. Sweet, his wife, conveyed said lot and premises to the said Charles T. Davis and the defendant Elliott, and their heirs, in trust, to secure a certain promissory note made by said Sweet and wife for the sum of $5,000, bearing even date with said last-mentioned trust, and payable to the order of the defendant Williams in four years after its date, with interest at nine per cent. until paid, payable semi-annually; and the said trust deed did authorize the said Charles T. Davis and the said Elliott to sell said property at public auction upon default being made in the payment of said last-mentioned note, or of any instalment of interest thereon, and to apply the proceeds of sale, after the payment of costs, expenses, and commissions to the trustees for their services, to the payment of whatever might be due on said $5,000 note, and the interest thereon, and to pay the residue to said Addie M. Sweet, her executors, administrators, and assigns; all of which will more fully appear, reference being had to said trust deed recorded on the same day as the said pretended release from said Charles T. Davis and Stickney as aforesaid, in liber No. 834 at folio 20, one of said land records. Copies of said release and of said last-mentioned trust are also filed herewith as a part of this bill, marked Complainants' Exhibits Nos. 3 and 4.

4 Seventh. Complainants further show that the said defendants Sweet and wife, by their certain deed, of date September 27, 1876, did convey said property to the defendant Charles T. Davis and his heirs, in trust, to secure the payment of six certain promissory notes made by the said Addie M. Sweet, each for the sum of $530.26, all bearing even date with this trust and payable to the order of said defendant Augustus Davis, respectively, in 6, 12, 18, 24, 30, and 36 months after their date, with power of sale to said trustee only upon default in the payment of said notes; said trust was recorded on the 29th day of September, 1876, in liber 828, folio 458, one of said land records, and which record complainants make a part of this bill, and ask leave to be permitted to read at the hearing. Complainants are informed and believe, and on information and belief aver, that Augustus Davis, said payee of said six notes, endorsed the same in blank, and that they were all discounted by the defendant the Citizens' National Bank of Washington City, D. C., a body corporate under the general laws of the United States, and doing business in said city, and are now held by said bank. That according to their tenor and effect two of said notes are past due, but complainants are unable to state whether any of them have been paid or not, and ask that the said bank may discover and make known what amount, if any, is now due thereon, and whether or not they hold the same.

Eighth. By deed dated October 17, 1876, and recorded October 18,

1876, said defendants Edwin J. Sweet and Addie M., his wife, did convey said property, or their interests therein, to the defendant Jones and his heirs, in trust, to secure a certain note for $650 of even date therewith, made by said Edwin J. Sweet, and payable to the order of the defendant Pairo in two months after its date, with interest at per cent. per annum until paid, as will more fully appear reference being had to the record thereof in liber No. 836, at folio 114, one of said land records, and which record complainants also make a part of this bill, and ask leave to produce in court and read at the hearing hereof. The said note for $650 is long since due; complainants are informed and believe, and on information and belief aver that said Pairo endorsed the same in blank and passed it to the defendant Jones, but complainants are unable to state of their own knowledge who now holds said note nor whether the same has been paid, and ask that the defendants Pairo and Jones may discover the true facts concerning the same.

Ninth. Complainants are informed and believe, and on information and belief aver, that default having been made in the payment of the semi-annual instalments of interest on said $5,000 note, the said Williams, as the holder of the same, directed the trustees named in said last-mentioned trust to sell said property under the power thereby vested in them, and in pursuance of such direction they did advertise said property for sale on several different days, and finally made a pretended sale thereof to the defendant Blackwood, who at the time was the partner of the said Charles T. Davis, one of the trustees who made the sales and otherwise associated with him in business ventures and specula-
5 tions, on the 17th day of July last, for the sum of $6,325, and by deed bearing date on the same day the property was sold, said trustees conveyed said property to said Blackwood and his heirs, in fee; said last-mentioned deed was recorded among said land records on the 23d day of August, 1877, in liber No. 865 at folio 147. Copies of the said advertisements of sale are hereto attached as a part of this bill.

That contemporaneous with the execution and delivery of said last-mentioned deed, and by deed of even date therewith, said Blackwood conveyed said property to the defendants Mahlon Ashford and Augustus Davis and their heirs, in trust, to secure the promissory note of the said Blackwood, bearing date with said last-mentioned trust deed, for the sum of $5,000, payable to the order of said Elliott and Charles T. Davis, trustees, in four years after date, with interest until paid, at nine per cent. per annum, payable semi-annually.

This trust contains the usual powers of sale upon default, and is recorded in liber 865, folio 142, of said land records.

Copies of said deed from said trustees, Charles T. Davis and Elliott, to said Blackwood, and of the trust from the latter to said Ashford and Augustus Davis, are herewith filed as a part hereof for greater certainty as to their contents and provisions, and are marked Complainants' Exhibits Nos. 5 and 6.

Tenth. Complainants are informed and believe, and on information and belief charge and aver, that at or about the date of the execution and delivery of said trust from said Blackwood to said Augustus Davis and Ashford, the payees of said last-mentioned note, Elliott and Charles T. Davis, trustees as aforesaid, endorsed the same in blank, and delivered the same

to said defendant Williams in payment of the note for the same amount secured by the trust to said Elliott and Charles T. Davis as aforesaid, and the same was taken by said Williams as such payment, and the note for said sum first held by him was thereupon duly cancelled; and complainants are further informed and believe, and on information aver, that said Williams is now the holder of said $5,000 note, endorsed and delivered by said Elliott and Charles T. Davis as aforesaid, and claims that the same, together with the trust given by said Blackwood to secure the same as aforesaid, constitute a lien or encumbrance on said property, having priority over the trust from said Sweet and wife to said Stickney and Charles T. Davis, given to secure complainants' said notes as aforesaid, and so as aforesaid fraudulently attempted to be released; and that it is also claimed by the parties secured by the trust deeds from said Sweet and wife to the defendants Davis and Jones, as recorded as aforesaid, respectively, on the 29th day of September, 1876, and the 18th day of October, 1876, in the libers Nos. 828, folio 458, and 836, folio 114, that their said trust deeds have priority over the trusts executed as aforesaid, to secure complainants' notes.

Eleventh. Complainants are further informed and believe, and on information and belief charge and aver, that contemporan'ous with the execution and delivery of said two last-mentioned conveyances, or
6 within a short time thereafter, said Blackwood, in pursuance of a secret understanding and agreement with said Charles T. Davis, entered into at or before the sale by him and said Elliott of said property, did execute and deliver a deed therefor, in fee, to the defendant Ida S. Davis, the wife of the said Charles T. Davis, and the same is now held by her, or by her said husband, but has not been recorded to complainants' knowledge, and the said Ida S. Davis claims to be the owner of said property by virtue thereof, and of the sale made by her said husband and the said Elliott to said Blackwood as aforesaid, and she has instituted proceedings on the law side of this court, as such owner under the law governing proceedings between landlord and tenant in force in this District, to recover rent from said defendant Edwin J. Sweet as her tenant, claimed by her to be due and unpaid since the date of said sale to said Blackwood, and has caused the goods and chattels of the said Sweet in said premises to be attached for such rent, and said cause is now pending and is number 18649 at law, and complainants make the proceedings therein a part of this bill and ask 'eave to be permitted to read at the hearing.

Twelfth. Complainants are further informed, and on information and belief aver and charge, that at the time the said Williams took said note for $5,000, dated September 27th, 1876, the said pretended release was not recorded, and they are advised by counsel, believe, and claim that the fact of the execution of such release, under the circumstances, is not sufficient to deprive complainants of their said security, the said Williams having notice of their said lien, and when in fact their said notes were unpaid; and complainants charge that the purchaser of said property by said Blackwood, at the sale made by said Charles T. Davis and the said Elliott as aforesaid, was under and in pursuance of a secret arrangement entered into before and at the time of sale by said Charles T. Davis, the said Blackwood and the said Sweet, to benefit the said Sweet and the said Charles T. Davis,

and that the sale by said Davis to said Blackwood was, in effect, a sale to himself and void, and the sale at the price stated was at an inadequate price, and much less than it was actually and fairly worth, and should be set aside.

Prayer.

First. That the defendants, Eli S. Blackwood, Charles T. Davis, Ida S. Davis, Edwin J. Sweet, Addie M. Sweet, Augustus Davis, Robert K. Elliott, Mahlon Ashford, J. Stanley Jones, Wm. Stickney, Richard E. Pairo, Samuel T. Williams, and the Citizens' National Bank of Washington, D. C., may be duly served with procees herein, and required to answer to the best of their information, knowledge, and belief each and every allegation contained in this bill.

Second. That the pretended release, executed as aforesaid, by said Charles T. Davis and William Stickney, may be declared void and to be of no effect as against the security of the trust given as aforesaid to said Charles T. Davis and said Stickney to secure the notes held
7 by these complainants, and that the said trust may be decreed to have priority over all subsequent encumbrances and conveyances so made as aforesaid.

Third. That the sale of said property by Charles T. Davis and Elliott, as trustees, to said Blackwood, may be vacated and set aside.

Fourth. That the said Charles T. Davis may be removed as trustee, under the aforesaid trust to him and said Stickney, and that a new trustee may be appointed in his place and stead, or that the said property may be sold by a trustee appointed by this court for that purpose, and the proceeds of sale brought into court to be applied under its order to the payment of complainants' said notes, and to whomsoever may be lawfully entitled thereto.

Fifth. That the defendant Charles T. Davis and Ida S. Davis, his wife, their agents and attorneys, may be enjoined from delivering any deed of said property now in their possession or under their control, and from executing and delivering any conveyance thereof, or in any manner transfering the same or interfering therewith; and that the said Blackwood may be also enjoined from executing or delivering any conveyance of said property, and be prohibited from interfering therewith in any manner; and pending this suit that the said Mahlon Ashford, Augustus and Charles T. Davis and J. Stanley Jones, trustees as aforesaid, may be enjoined from proceeding under said trust deeds, or any of them.

Sixth. That the defendants Williams, Pairo, the said bank, and the said Augustus Davis may discover and make known what amount, if any, is due on the several notes pretended to be secured as aforesaid, and who are the holders or owners thereof, and for the purposes of this suit that all necessary accounts and audits may be taken under the direction of the court.

Seventh. That complainants have such other and further relief in the premises as the nature of the case may require.

JACKSON, BRO. & CO.

EDWARDS & BARNARD,
Solicitors for Complainants.

DISTRICT OF COLUMBIA, *ss:*

I, William B. Jackson, do make oath that I am one of the complainants in the above-entitled cause, and a member of the said firm of Jackson, Bro. & Co.; that I have heard read the aforegoing bill and know the contents thereof, and that the facts therein stated of my own knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WM. B. JACKSON.

Sworn to and subscribed before me this 22d day of November, A. D. 1877.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Asst. Clerk, &c.

8 *Complainants' Exhibit No.* 1.—*Filed Nov.* 22, 1877.

This indenture, made this first day of January, in the year of our Lord one thousand eight hundred and seventy-five, between Addie M. Sweet and Edwin J. Sweet, her husband, of the city of Washington, in the District of Columbia, of the first part, and Charles T. Davis and William Stickney of the said city and District of the second part.

Whereas the said Addie M. Sweet and Edwin J. Sweet stand justly indebted unto Augustus Davis in the full sum of eight thousand dollars ($8,000) deferred payments of purchase money for the hereinafter-described property, for which amount they have made and delivered to said Augustus Davis their four certain promissory notes, dated January first (1st), 1875, and payable to the order of said Augustus Davis, the first three for the sum of one thousand eight hundred and thirty-three dollars and thirty-three cents ($1,833.33), each payable, respectively, in one (1), two (2), and three (3) years after date, and the fourth for the sum of two thousand five hundred dollars ($2,500), payable in three years after date, all with interest at the rate of eight (8) per cent. per annm until paid, payable semi-annually;

And whereas the said parties of the first part are desirous of securing the full and punctual payment of said notes as the same mature, and all interest, costs, and charges which may properly accrue thereon:

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one (1) dollar in lawful money of the United States to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, alienated, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, release, and convey, unto the said parties of the second part, their heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plan of said city as lot numbered forty-nine (49) of Augustus Davis' subdivision of original lot numbered eight (8) in square numbered five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, in liber H. D. C. and folio 223; together with all the improvements, ways, easements, rights, privileges, and

appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises: To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns; in and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said parties of the first part, their heirs or assigns, to use and occupy the said described
9 premises and the rents, issues, and profits thereof to take, have, and apply to and for her or their sole use and benefit, until default be made in the payment of said notes, or any of them, or any proper cost, charge, commission, half commission, or expenses in and about the same. And upon the full payment of all said notes and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter provided for, to release and convey the said described premises unto the said Addie M. Sweet, her heirs or assigns, at her or their cost. And upon this further trust, that upon default being made in the payment of said notes, or any one or more of them, or the interest thereon, or any proper cost, charge, commission, half commission or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said parties of the second part, the survivor, his heirs, or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Addie M. Sweet, her executors, administrators, or assigns. And the said parties of the first part do hereby agree, at their own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against fire, in the name and to the satisfaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, and that upon any default or neglect to so insure, any party secured hereby may have said improvements insured [illegible] the expense thereof shall be a charge hereby secured and bear like interest as the matter secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ADDIE M. SWEET. [SEAL.]
EDWIN J. SWEET. [SEAL.]

Signed, sealed, and delivered in presence of—
M. M. ROHRER.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. M. Rohrer, a notary public in and for the said county, in said District, do hereby certify that Edwin J. Sweet and Addie M. Sweet, his wife, parties to a certain deed bearing date on the first day of January, A. D. 1875, and hereto annexed, personally appeared before me in said county, the said Edwin J. Sweet and Addie M. Sweet being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed. And the said Addie M. Sweet, being by me examined privately and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not retract it.

Given under my hand and my notarial seal this 12th day of January, A. D. 1875.

[NOTARIAL SEAL.] M. M. ROHRER,
Notary Public.

(Endorsement:) Received for record on the 14th day of January, A. D. 1875, at 2.10 o'clock p. m., and recorded in liber 776, fol. 48, one of the land records for Washington County, in the District of Columbia, and examined by , recorder. Ex. delivered to Davis, February 4th, 1875. R. R.

Complainant's Exhibit No. 2.—Filed Nov. 22, 1877.

$1,833.33.] WASHINGTON, D. C., *January 1st*, 1875.

Two years after date we promise to pay to the order of Augustus Davis the sum of one thousand eight hundred and thirty-three $\frac{33}{100}$ dollars, value received, with interest at 8 per cent. per annum until paid.

Payable semi-annually.

Due.

ADDIE M. SWEET.
EDWIN J. SWEET.

(On margin:) Secured by deed of trust. A. Davis & Son, real estate brokers.

Endorsement.

1875, July 3. By cash for int. to July 1st, 1875, $73.33.
1876, Jan. 8. By cash for int. to Jan. 1st, 1876, $73.33.
1876, July 15. By cash for int. to July 1st, 1876, $73.33.

AUGUSTUS DAVIS.
JACKSON, BRO. & CO.

We hereby guarantee the payment of the within note without demand, notice, or protest.

A. DAVIS & SON.

JAN. 4, 1877.

$1,833.33.] WASHINGTON, D. C., *January 1st*, 1875.

Three years after date we promise to pay to the order of Augustus

Davis the sum of one thousand eight hundred and thirty-three $\frac{33}{100}$ dollars, value received, with interest at 8 per cent. per annum until paid.

Payable semi-annually.

Due.

ADDIE M. SWEET.
EDWIN J. SWEET.

(On margin :) Secured by deed of trust. A. Davis & Son, real estate brokers.

11 Endorsement.

1875, July 3. By cash for int. to July 1, 1875, $73.33.
1876, Jan. 8. By cash for int. to Jan. 1, 1876, $73.33.
1876, July 15. By cash for int. to July 1st, 1876, $73.33.

AUGUSTUS DAVIS.

$2,500$\frac{00}{100}$. WASHINGTON, D. C., *January 1st*, 1875.

Three years after date we promise to pay to the order of Augustus Davis the sum of two thousand five hundred dollars, value received, with interest at 8 per cent. per annum until paid.

Payable semi-annually.

Due.

ADDIE M. SWEET.
EDWIN J. SWEET.

(On margin :) Secured by deed of trust. A. Davis & Son, real estate brokers.

Endorsement.

1875, July 3. By cash for int. to July 1, 1875, $100.00.
1876, Jan. 8. By cash for int. to Jan. 1, 1876, $100.00.
1876, July 15. By cash for int. to July 1, 1876, $100.

AUGUSTUS DAVIS.
CHARLES T. DAVIS.

Complainant's Exhibit No. 3.—Filed Nov. 22, 1877.

This indenture, made this fifteenth day of September, in the year of our Lord one thousand eight hundred and seventy-six, between Charles T. Davis and William Stickney, of the city of Washington, District of Columbia, trustees of the first part, and Addie M. Sweet, of the said city and District of the second part ; whereas the said Addie M. Sweet heretofore made and executed a certain deed of trust, bearing date on the first (1st) day of January, in the year of our Lord eighteen hundred and seventy-five, and thereby conveyed unto the said parties of the first part, and to the survivor of them, his heirs and assigns, the following-described real estate in the District of Columbia, to wit, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plan of said city as lot numbered forty-nine (49) of Augustus Davis' subdivision

of original lot numbered eight (8) in square numbered five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, in trust to secure the payment of a certain indebtedness herein mentioned, all of which will more fully and at large appear upon reference to said deed of trust, which has been duly recorded in liber 776, folio 48, one of the land records of the District of Columbia. And
12 whereas the said indebtedness and all interest, cost, and expenses thereon having been fully paid and discharged, as is evidenced by the signature hereto of Augustus Davis, the holder of the note for said indebtedness, the said party of the second part is hereby entitled to a reconveyance of said described premises, and to have the same released and discharged of and free of lien, claim, demand, or incumbrance, by reason of said deed of trust or anything therein contained:

Now, therefore, this indenture witnesseth that the said parties of the first part, trustees as aforesaid, for and in consideration of the premises aforesaid, and further the sum of one dollar in lawful money of the United States to them now in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and do by these presents grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns forever, all the hereinbefore-described premises, and all the right, privileges, and appurtenances to the same belonging, or in anywise appertaining. To have and to hold the same unto the use of the said party of the second part, her heirs and assigns forever, as in her first and former estate, free, released, and forever discharged of and from all lien or incumbrances by reason of said deed of trust.

In testimony whereof the said parties of the first part, as trustees as aforesaid, have hereunto set their hands and seals on the day and year first hereinbefore written.

CHARLES T. DAVIS, *Trustee.* [SEAL.]
WILLIAM STICKNEY, *Trustee.* [SEAL.]
AUGUSTUS DAVIS, *Party Secured.*

Signed, sealed, and delivered in the presence of—
THOMAS R. JONES.

DISTRICT OF COLUMBIA,
County of Washington, scelicet:

I, Thomas R. Jones, a notary public in and for the said District, do hereby certify that Charles T. Davis and William Stickney, of the city of Washington, District of Columbia, trustees, parties to a certain deed bearing date on the 15th of September, A. D. 1876, hereto annexed, personally appeared before me in said District the said Charles T. Davis and William Stickney, trustees, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and my seal this 19th day of September, A. D. 1876.

[SEAL.] THOMAS R. JONES,
Notary Public.

Endorsement.

Received for record on the 28th day of September, 1876, and recorded in liber No. 834, folio 18.

Ex'd and delivered to C. T. Davis, March 31, 1877.

R. R.

13 *Complainant's Exhibit No. 4.—Filed Nov. 22, 1877.*

This indenture, made this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and seventy-six, between Addie M. Sweet and Edwin J. Sweet her husband, of the city of Washington, District of Columbia, of the first part, and Charles T. Davis and Robert K. Elliott, of the said city and District, trustees, of the second part.

Whereas the said Addie M. Sweet stands justly indebted unto Samuel T. Williams for the full and just sum of five thousand dollars ($5,000), for which amount she hath made and passed to the said Samuel T. Williams her certain promissory note, bearing even date herewith, and payable to the order of said Samuel T. Williams, at the German American Savings Bank, in four (4) years after date, for the sum of five thousand dollars ($5,000), with interest at the rate of nine (9) per cent. per annum until paid, payable semi-annually;

And whereas the said parties of the first part are desirous of securing the full and punctual payment of said note and interest as the same mature, they therefore execute these presents:

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid and for the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plans of said city as lot number forty-nine (49) of Augustus Davis' subdivision of original lot number eight (8), in square number five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, said lot forty-nine (49) having a front on M street north of twenty (20) feet and two (2) inches by a depth of one hundred and eight (108) feet eight and one-half (8½) inches, together with the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all of the estate, right, title, interest, and claim, either at law or in equity, or otherwise however of the said parties of the first part, of, in, to, or out of the said described real estate and premises. To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared, that

is in trust to permit the said parties of the first part, their heirs or
14 assigns, to use and occupy the said described premises, and the

rents, issues and profits thereof, to take, have, and apply to and for her and their sole use and benefit until default be made in the payment of said note, or any interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same. And upon full payment of all of said note, and the interest thereon, and all other proper costs, charges, commission, half commission, and expenses at any time before the sale hereinafter provided for, to release and convey the said described premises unto the said Addie M. Sweet, her heirs or assigns, at her or their cost. And upon this further trust, that upon default being made in the payment of said note, or any interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises at public auction, upon such terms and conditions and at such time and place, and after such previous public advertisement as the said parties of the second part, their heirs or assigns, the survivor, his heirs, or trustee acting in the execution of this trust, shall deem advantageous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money, and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five (5) per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said note, and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Addie M. Sweet, her executors, administrators, or assigns; and the said Addie M. Sweet doth hereby agree, at her own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due, and to keep the said improvements insured against fire in the name and to the satisfaction of the said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes or assessments, or to so insure, any party secured hereby may pay said taxes and assessments, or may have said improvements insured and the expense thereof shall be a charge hereby secured, and bear like interest as the matter secured; and it is expressly provided that if said property shall be advertised for sale under the provisions of this deed and not sold, then the said trustee shall be entitled to one-half (½) the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ADDIE M. SWEET. [SEAL.]
EDWIN J. SWEET. [SEAL.]

Signed, sealed, and delivered in presence of—
M. P. CALLAN.

15 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. P. Callan, a notary public in and for the said District, do hereby certify that Addie M. Sweet and Edwin J. Sweet, her husband, of the

city of Washington, District of Columbia, parties to a certain deed bearing date on the 27th day of September, A. D. 1876, hereto annexed, personally appeared before me in said District the said Addie M. Sweet and Edwin J. Sweet, her husband, being personally well known to me to be the persons who executed the said deed and acknowledge the same to be their act and deed; and the said Addie M. Sweet being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she has willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my notarial seal this 27th day of September, A. D. 1876.

MICH'L P. CALLAN,
Notary Public.

Endorsement.

Received for record Sept. 28, 1876, at 11 o'clock a. m., and recorded liber 834, folio 20.

Examined and delivered to S. F. Williams, Dec. 15, 1876.

R. R.

Complainant's Exhibit No. 5.—Filed Nov. 22, 1877.

This indenture, made this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-seven, between Charles T. Davis and Robert K. Elliot, of the city of Washington, District of Columbia, trustees, of the first part, and Eli S. Blackwood, of the said city and District, of the second part, witnesseth: That whereas, by deed dated September 27th, A. D. 1876, Addie M. Sweet and Edwin J. Sweet, her husband, of the said District, did grant and convey to the parties of the first part certain real estate in the city of Washington, District of Columbia, in trust, to secure the payment of a certain debt, and with power and authority, in case of default in the payment of said debt or the interest thereon, to sell said real estate at public auction, all of which will appear from said deed duly recorded in liber 834, folio 20, one of the land records of said District; and the said Addie M. Sweet having made default in payment of said debt, and the legal holder of the note for said indebtedness having requested a sale of said real estate, and the said parties of the first part, as trustees, having, after previous advertisements of the time, manner, place, and terms of said sale, exposed said real estate here-
16 in conveyed, on the seventh day of July, A. D. 1877, at public auction, at which said sale said party of the second part being the highest bidder for said herein-conveyed real estate, became the purchaser thereof at and for the sum of sixty-three hundred and twenty-five dollars, ($6,325,) which said amount has been by him fully paid and satisfied to the said parties of the first part; and the said party of the second part is entitled to a conveyance of said premises:

Now, therefore, this indenture witnesseth: That said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of five (5) dollars in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing

and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plan of said city as lot numbered forty-nine (49) of Augustus Davis' subdivision of original lot number eight (8) in square number five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first part, of, in, and to the said piece or parcel of land and premises:

To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said parties of the first part, as trustees as aforesaid, has hereunto set their hands and seals on the day and year first hereinbefore written.

CHARLES T. DAVIS, [L. S.]
Trustee.

ROBERT K. ELLIOT, [L. S.]
Trustee.

Signed, sealed, and delivered in presence of—
W. P. BELL.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, William Peirce Bell, a notary public in and for the District aforesaid, do hereby certify that Charles T. Davis and Robert K. Elliot, trustees, parties to a certain deed bearing date on the 17th day of July, A. D. 1877, and hereto annexed, personally appeared before me, in the District aforesaid, the said Charles T. Davis and Robert K. Elliot, trustees,
17 being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this 23d day of August, A. D. 1877.

[SEAL.] WM. PEIRCE BELL,
Notary Public.

(Endorsement:) Received for record on the 23d day of August, A. D. 1877, at 3 o'clock p. m., and recorded in liber 865, folio 147, one of the land records for the county of Washington, in the District of Columbia, and examined by , recorder.

Complainant's Exhibit No. 6.—Filed Nov. 22, 1877.

This indenture, made this seventeenth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, between Eli S. Black-

wood (bachelor), of the city of Washington, District of Columbia, of the first part, and Mahlon Ashford and Augustus Davis, of the said city and District, trustees, of the second part.

Whereas the said Eli S. Blackwood stands justly indebted unto Charles T. Davis and Robert K. Elliot, trustee, in the full sum of five thousand dollars ($5,000), deferred payment of purchase money for the hereinafter described property, for which amount he hath made and passed to the said Charles T. Davis and Robert K. Elliot, trustees, his certain promissory note, bearing even date herewith and payable to the order of Charles T. Davis and Robert K. Elliot, trustees, at the Metropolis Savings Bank, in four years after date, for the sum of five thousand dollars (5,000), with interest at the rate of nine (9) per cent. per annum until paid, payable semi-annually; and whereas the said Eli S. Blackwood is desirous of securing the full and punctual payment of said note and interest as the same mature and become due and payable, he therefore executes these presents:

Now, therefore, this indenture witnesseth that said party of the first part, for and in consideration of the premises aforesaid, and further, the sum of one (1) dollar in lawful money of the United States to them in hand paid by the parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plat and plan of said city as lot numbered forty-nine of Augustus Davis' subdivision of original
lot eight (8), in square numbered five hundred and thirteen, as the
18 same is recorded in the surveyor's office of the District of Columbia, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said described real estate and premises.

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, that is, in trust to permit the said Eli S. Blackwood, his heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said note or any interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, and upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter *before* provided for to release and reconvey the said described premises unto the said Eli S. Blackwood, his heirs or assigns, at his or their cost; and upon this further trust, that upon default being made in the payment of the said note, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same,

then and at any time thereafter to sell the said described real estate and premises at public auction, upon such terms and conditions and at such time and place, and after such previous public advertisement as the said parties of the second part, their heirs and assigns, the survivor, his heirs, or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five (5) per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Eli S. Blackwood, his executors, administrators, or assigns; and the said Eli S. Blackwood doth hereby agree, at his own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due, and to keep the said improvements insured against fire in the name and to the satisfaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and if upon any default or neglect to so pay said taxes and assessments, or to so insure, any party secured hereby may pay said taxes and assessments, or
19 may have said improvements insured, and the expense thereof shall be a charge hereby secured, and bear like interest as the matter secured.

And it is expressly provided that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof the said party of the first part hath hereunto set his hand and seal on the day and year first hereinbefore written.

ELI S. BLACKWOOD, [SEAL.]
Unmarried.

I except the trusteeship under this trust.

M. ASHFORD.

Signed, sealed, and delivered in presence of—
M. P. CALLAN.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Michael P. Callan, a notary public in for the said county in said District, do hereby certify that Eli S. Blackwood (bachelor), party to a certain deed bearing date on the seventeenth day of July, A. D. 1877, and hereto annexed, personally appeared before me in the said District, the said Eli S. Blackwood (bachelor) being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and my official seal this 22d day of August, A. D. 1877.

[NOTARIAL SEAL.] M. P. CALLAN,
Notary Public.

Endorsement.

Received for record on the 23d day of Aug., A. D. 1877, at 2.40 p. m., and recorded in liber 865, folio 142, one of the land records for Washington County, in the District of Columbia, and examined by , recorder.

In the supreme court of the District of Columbia.

IDA S. DAVIS, PLAINTIFF,
vs.
EDWIN J. SWEET, DEFENDANT. } At law. No. 18649.

The plaintiff sues the defendant for money payable by the defendant to the plaintiff:

For goods sold and delivered by the defendant to the plaintiff, and for work done and materials provided by the plaintiff for the defendant at his request; and

For money loaned by the plaintiff to the defendant; and

For money paid by the plaintiff for the defendant at his request; and

For money received by the defendant to the use of the plaintiff; and

For money found to be due the plaintiff from the defendant on accounts stated between them; and

For the defendant's use and occupation, by the plaintiff's permission, of the house and messuage known as No. 437 M street northwest, in the city of Washington, District of Columbia, for a period of three months, to wit, from the 17th day of July to the 17th day of October, A. D. 1877, at the monthly rent of seventy-five dollars ($75) per month. And the plaintiff claims two hundred and twenty-five dollars ($225), with interest from the 17th day of October, A. D. 1877, besides costs of suit.

CHAS. A. ELLIOT,
Att'y for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

CHAS. A. ELLIOT,
Plaintiff's Att'y.

Particulars of demand.

Edwin J. Sweet to Ida S. Davis, Dr.

To three months' rent of house No. 437 M street N. W. (from July 17th to Oct. 17th, 1877), @ $75.00 per month, $225.

Be it remembered that on this first (1st) day of November, A. D. 1877,

personally appeared before me the above-named plaintiff, Ida S. Davis, and made oath in due form of law that the cause of action herein against the defendant arises ex contracto, and is distinctly and truly set out in the foregoing declaration and particulars of demand, and that the said sum of $225, with interest as aforesaid, therein claimed by the plaintiff by reason of the premises, is due and payable by the defendant, exclusive of all set offs and just grounds of defence. And affiant further makes oath that this action is brought to recover from the defendant rent of house and premises No. 437 M street N. W., in the city of Washington, District of Columbia, for a period of three months, to wit, from July 17th to October 17th, 1877, now overdue and unpaid.

IDA S. DAVIS.

21 Subscribed and sworn to before me this first day of November, A. D. 1877.

[L. S.] MICH. P. CALLAN,
Notary Public.

(On back:) At law. No. 18649. Ida S. Davis vs. Edwin J. Sweet. Nar., aff., rule to plead, &c.

The clerk will please file and issue attachment for rent, &c.

CHAS. A. ELLIOT.

Filed Nov. 1, 1877. R. J. Meigs, clerk.

Motion to quash attachment.—Filed Nov. 5, 1877.

IDA S. DAVIS
vs.
EDWIN J. SWEET. } No. 18649. At law.

The defendant moves the court to quash the attachment in this case because—

1st. Said attachment was irregularly issued.

2d. The declaration does not set up a case for attachment.

3d. Because the relation of landlord and tenant did not exist between these parties.

4th. That an attachment will not lie in case for use and occupation.

MATTINGLY,
For Def't.

Affidavit of defendant.—Filed Nov. 3d, 1877.

In the supreme court of the District of Columbia.

IDA S. DAVIS, PLAINTIFF,
vs.
EDWIN J. SWEET, DEFENDANT. } At law. No. 18649.

22 Personally appeared before me, R. J. Meigs, clerk of the supreme court of the District of Columbia, Edwin J. Sweet, who, after having been duly sworn according to law, deposed and said that he is the defendant in the above entitled suit; that no relation of landlord and

tenant exists between him and said plaintiff; that the premises described in the declaration in this suit for which said plaintiff seeks thereby to recover of him rent alleged to be due and unpaid, are equitably still his under the following circumstances: The said premises were sold under a deed of trust last July, made by him, and bought in by one Charles T. Davis, who is the husband of said plaintiff, for his (defendant's) benefit, with the tacit understanding between him and said Charles T. Davis that he (defendant) might redeem at any time when unconcluded matters between him and said Charles T. Davis shall have been brought to a close; that said open matters have not yet been concluded; although he (defendant) has often requested said Charles T. Davis to do so, he still refuses; that the purchase-money of said premises at said sale was furnished wholly by the said Charles T. Davis, who procured the title to be conveyed to the said plaintiff, his wife; that since the said sale of said premises as aforesaid, no demand for rent or for use and occupation, or for possession of said premises, has been made of him (defendant) by the said plaintiff, or any person acting for her; that he denies that he is indebted to the plaintiff for the whole or any part of said alleged rent arrear; that the first notice he had of the plaintiff's considering that he (defendant) was in possession of said premises without right, or was the tenant of the plaintiff, was the institution of this suit; that the personal chattels found on the premises by the United States marshal for the District of Columbia, and attached by him under and by virtue of the writ issued out of this court to him in this suit, are not his (defendant's); that they are the legal property of one Wm. B. Jones, trustee in a bona fide chattel mortgage made by him while he was the undisputed owner of said premises, and made long prior to said sale of the premises described herein and duly recorded among the land records for the District of Columbia, and still wholly unpaid and unreleased of record; that he has confessed the said personal chattels to be the legal property of the said Jones, trustee, in a replevin suit instituted by said Jones for the recovery of the possession thereof in this court.

EDWIN J. SWEET.

Subscribed and sworn to before me this 3d day of November, A. D. 1877.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

23 In the supreme court of the District of Columbia, the 22d day of November, 1877.

Subpœna to answer.

JACKSON BROS. & CO., COMPLAINANTS,
against
ELI S. BLACKWOOD ET AL., DEFENDANTS.
No. 5950. Eq'y. Dock. 17.

The President of the United States to Eli S. Blackwood, Charles T. Davis and Ida L. Davis, his wife, Edwin J. Sweet and Addie M. Sweet, his wife, Augustus Davis, Robert K. Elliott, Mahlon Ashford, J. Stanley Jones, William Stickney, Richard E. Pairo, Samuel T. Williams, and The Citizens' National Bank of Washington City, D. C., defendants:

You are hereby commanded to appear in this court at its first special

term occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Restraining order.

The defendants are hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 4th day of December, 1877, of which take notice.

By the court.

A. WYLIE, *Justice.*

Marshal's return.

Not to be found, Eli. S. Blackwood and Samuel T. Williams; summoned and served notice of injunction on Chas. T. Davis and wife, Ida L. Davis, Augustus Davis, Mahlon Ashford, and J. Stanley Jones; summoned the others Nov. 22d, 1877.

F. DOUGLASS, *Marshal.*

24 *Order for appearance of absent defendants.—Filed December* 13, 1877.

In the supreme court of the District of Columbia, the 13th day of December, 1877.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

On motion of the plaintiffs, by Messrs. Edwards & Barnard, their solicitors, it is ordered that the defendant Eli S. Blackwood cause his appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court.

A. WYLIE,
Justice, &c.

Answer of Samuel T. Williams.—Filed January 2, 1878.

In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON, WILLIAM B. JACKSON, and George J. Seufferle, trading under the firm name of Jackson Brothers & Co., *vs.* ELI S. BLACKWOOD, CHARLES T. DAVIS, AND Ida S. Davis, his wife, Edwin J. Sweet, Addie M. Sweet, his wife, Augustus Davis, Robert K. Elliott, Mahlon Ashford, J. Stanley Jones, William Stickney, Richard E. Pairo, Samuel T. Williams, and The Citizens' National Bank of Washington City, D. C.	No. 5950.	Equity.

To the supreme court of the District of Columbia sitting in equity:

The several answer of Samuel T. Williams, one of the defendants, to the above-named bill of complaint of William B. Jackson et al. vs. Eli S. Blackwood et al.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as he, the said defendant, is advised is material for him to make answer unto, answers and says, he denies that at the time he took said note for $5,000, dated September 27, 1876, named in said bill, the said release by William Stickney and Charles T. Davis was not recorded.

And this defendant, further answering, says he denies the averment, or rather the passing suggestion, made in said bill of complaint, that he had notice of the alleged lien of said complainants.

And this defendant, further answering, says that he made the loan for which he received said note for $5,000 in perfect good faith, on the 28th of September, 1876, and not, as suggested in said bill, on the previous day, in full reliance on an abstract of title to said lot 49, of Augustus Davis's subdivision of original lot 8 in square 513, made and signed by M. Ashford, and dated September 28, 1876, which said abstract and a copy thereof filed herewith, marked "S. T. W.'s Exhibit No. 1," this defendant makes a part of this answer, and asks leave to read at the hearing of this cause.

And this defendant, further answering, says that the said abstract showed to the satisfaction of this defendant that the release named in said bill, signed by William Stickney and Charles T. Davis, dated September 18, 1876, and executed September 19, 1876, had been recorded September 28, 1876, prior to the receipt of said note for $5,000, dated September 27, 1876, and prior to the payment of the $5,000 loaned by this defendant, for which he took said note secured by the said deed of trust to Robert K. Elliot and Charles T. Davis named in said bill, and dated September 27, 1876, and recorded September 28, 1876.

And this defendant, further answering, says he relies on said last-named deed of trust as a full and legal security for the repayment of the $5,000

so loaned as aforesaid in entire good faith, and without knowledge of any fact which ought or might vitiate said security.

And this defendant, further answering, says he denies all unlawful or other combination and confederacy in the said bill charged or indirectly suggested against him, without this, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

SAM'L T. WILLIAMS.

WM. A. MAURY,
R. K. ELLIOT,
Of Counsel for Def'ts.

26 DISTRICT OF COLUMBIA, *ss:*

I, Samuel T. Williams, do make oath that I am one of the defendants in the above-entitled cause; that I have read the foregoing answer, and that the facts therein stated are true.

SAM'L T. WILLIAMS.

Subscribed and sworn before me Jan'y 2, 1878.

R. J. MEIGS, *Clk,*
By R. J. MEIGS, JR., *As't.*

EXHIBITS S. T. W. No. 1.

(Copy.)

Lot 49, sq. 513.

I have examined the title to lot 49 of A. Davis' sub. of original lot 8 in sq. 513, and find the same good in Addie M. Sweet, subject to a deed of trust to Chas. T. Davis and William Stickney, dated Jan'y 1, 1875, recorded Jan'y 4, 1875, lib. 776, fol. 48, to secure Augustus Davis $8,000, int. 8 per cent., which is the only lien or incumbrance except taxes for 1875–'6.

(Signed) M. ASHFORD.

SEPT. 14, 1876.

Since the above, the only change is: 1876, Sept. 28, release of trust above noted; 1875, Sept. 28, deed of trust to Chas. T. Davis and Robt. K. Elliot, dated Sept. 27, 1876, secure Sam'l T. Williams $5,000, 4 yrs., int. 9 per cent., semi-annually.

(Signed) M. ASHFORD.

SEPT. 28, 1876.

Answer of William Stickney.—Filed January 15, 1878.

Supreme court District of Columbia.

B. L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } Eq. 5950.

Sec. 3. Respondent admits the execution of the deed of trust to himself and Charles T. Davis, as stated in the third paragraph of the bill.

Sec. 4. He knows nothing of the matters stated in the fourth paragraph, and requires them to be proved, as far as proof of them may be material.

Sec. 5. He cannot admit the combination, misrepresentations, and falsehoods set out in paragraph No. 5, and, as far as they may [be]
27 material to the interests of this defendant, requires full proof of them.

Respondent, as his habit is, required satisfactory evidence of the payment of the notes referred to and secured by the deed of trust, and such evidence was produced to him before he executed the deed of release referred to in the bill. Respondent is unable, at this date, to state in what form such evidence was produced, but at the time he was well satisfied of the payment of the debt; and that it was his duty to execute such release, and, accordingly, executed it in good faith. And he prays to be hence dismissed with his reasonable costs.

WILLIAM STICKNEY.

W. S. COX, *Sol'r for Def't.*

I do solemnly affirm that I have read the answer by me above subscribed, and know the contents thereof, and that the facts stated therein of my personal knowledge are true, and those stated on information and belief I believe to be true.

WILLIAM STICKNEY.

Affirmed this 12th day of Jan'y, A. D. 1878.
[SEAL.] THOMAS R. JONES,
Notary Public.

Answer of The Citizens' National Bank.—Filed January 30, 1878.

In the supreme court of the District of Columbia.

JACKSON BROTHERS & COMPANY, COMPLAINANTS,
vs.
ELI S. BLACKWOOD ET AL., ET (13) THE CITIZENS' NATIONAL BANK OF WASHINGTON CITY. } No. 5950. Equity.

The above-named defendant The Citizens' National Bank of Washington City, a body corporate doing business in the District of Columbia by virtue of an act of Congress approved May 1st, 1874, to the bill of complainanants above named, saving and reserving all benefit and advantage to which it may be entitled by reason of errors and imperfections in said bill of complaint as if it had especially demurred thereto, for answer unto

said bill, or as much thereof as it is advised it should answer, says: 1. That none of the promissory notes described in complainants' bill have ever been discounted by the defendant The Citizens' National Bank of Washington City. That on the 30th day of January, 1877, the said de-
28 fendant received three promissory notes made by Addie M. Sweet on the 27th day of September, 1876, for $530 each, as described in complainants' bill, payable in six, twelve, and eighteen months after date. The said notes were deposited as a collateral security to secure the payment of a certain promissory note held by the defendants and now overdue. By the terms of the said promissory note, an interest in the three collateral notes, equal to the amount due on the aforesaid obligation, has become vested in The Citizens' National Bank of Washington City, who now hold the three notes by virtue of the premises.

March 27th, 1878, $536.10 will be due on one of said notes, and $535.15 is now due on each of the remaining two notes.

WILLIAM N. ROACH,
Cashier of The Citizens' National Bank of Washington City.

M. BLAIR & SON, *Sol. for Defendant.*

I do solemnly swear that I have read the answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

WILLIAM N. ROACH.

Subscribed and sworn to before me this 26th of January.

[SEAL.] WILLIAM SELBY,
Notary Public.

Decree pro confesso.

In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

It appearing to the court that the defendants Charles T. Davis and Ida L. Davis, his wife, and Augustus Davis were each duly served with process herein on the 22d day of November, 1877, and that they have not entered their appearance in this cause as required;

It is, this 30th day of January, 1878, ordered, adjudged, and decreed that the bill be, and the same is hereby, taken pro confesso against each of the above-named defendants.

By the court.

29 *Motion to vacate decree pro confesso.—Filed January* 31, 1878.

In the supreme court District of Columbia.

JACKSON BROS. & CO.
vs.
ELI S. BLACKWOOD ET AL.

The defendants move that the decree pro confesso for want of an appearance passed against them on January 30, 1878, be vacated and set aside.

CHAS. A. ELLIOT.

Order vacating decree pro confesso.

In the supreme court District of Columbia.

JACKSON BROS. & CO.
vs.
ELI S. BLACKWOOD ET AL. } 5950.

Upon consideration of the motion made by Augustus Davis, Ida S. Davis, and Charles T. Davis, by Chas. A. Elliot, their solicitor, it is this 1st day of February, A. D. 1878, ordered that the decree pro confesso passed in this suit against said defendants be, and the same hereby is, vacated and set aside.

By the court.

Answer of Edwin J. Sweet.—Filed February 8, 1878.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

To the supreme court of the District of Columbia, sitting in equity:

The several answer of Edwin J. Sweet, one of the defendants, to the above-named bill of complaint.

This defendant, answering, says he admits the execution of the several deeds of trust named and described in the bill, and declares that the same were acts of good faith in every particular so far as he was concerned.

30 This defendant denies all unlawful or other combination and confederacy charged in the fifth section of said bill, or indirectly intimated or suggested against him, and states that if injury was inflicted or fraud perpetrated upon others, it was not assisted or effected, directly or indirectly, by his act or agency; and he is advised and believes that if the trustees had faithfully performed their duties as recited in the deed of trust, and in accordance with custom and usage, the notes would have been cancelled, and this defendant would not have been injured.

This defendant, further answering, says the property described in said bill was purchased by him for his wife, to be occupied as a home for his family, and the several notes given by himself and wife, and secured by deed of trust upon said property (excepting the note to J. Stanly Jones mentioned in the eighth section of said bill), were for deferred payments of the purchase money, or in lieu thereof; and these notes were always represented to him to be in the possession or under the control of Charles T. Davis (one of the defendants to this bill), from whom the property was purchased, and not one dollar of the money received from the sale or trade of any of these notes was ever received by this defendant or his wife, nor ever placed to their credit or applied to their benefit, directly or indirectly.

This respondent, further answering, admits there was an understanding and agreement between Charles T. Davis and himself to the effect that he, the said Davis, was to become the purchaser of said property at the sale for the benefit of this defendant; and said Davis did so purchase the property,

but, being one of the trustees, caused the property to be conveyed to Eli S. Blackwood, the said Blackwood then or formerly being a partner in his business. The sale of the property under the deed of trust to R. K. Elliot and Charles T. Davis, and the purchase of the same by the said Davis, or his representative, Blackwood, for the benefit of this defendant, was believed to be a proper and just transaction, and the only remedy possible to protect the interest of this defendant under the peculiar circumstances then existing.

This defendant, further answering, says he is ready and willing at any time to assume the incumbrance now existing upon said property, and claims as a right that the property should be adjudged to be his as against the claims of Charles T. Davis, his representatives or assigns, and the plaintiffs in this cause; the securities held by said plaintiffs having been released without the knowledge of fraud or irregularity on the part of this defendant, all of which this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges.

EDWIN J. SWEET.

DISTRICT OF COLUMBIA, *ss:*

I, Edwin J. Sweet, do make oath that I am one of the defendants in above entitled cause; that I have read the foregoing answer, and
31 that the facts therein stated of my own knowledge are true, and that the facts therein stated upon information and belief I believe to to be true.

EDWIN J. SWEET.

Sworn and subscribed to before me this eighth day of February, A. D. 1878.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

Amended answer of Samuel T. Williams.—Filed February 5, 1878.

In the supreme court of the District of Columbia.

B. L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } 5950. Eq. Doc. 17.

The amended answer of Samuel T. Williams, one of the defendants to the bill of complaint in this cause.

This defendant, by leave of the court first had and obtained, amends his answer filed herein the 2d day of January, A. D. 1878, by adding the following:

9. Defendant admits that by reason of default in the payment of the semi-annual installment of interest on the note secured by the trust to the defendants Chas. T. Davis and R. K. Elliot, he directed the execution of the power of sale contained in said trust, and the ground and premises therein described were in pursuance thereof, after the notice by advertisement in "The Evening Star," sold on the 17th day of July, 1877, to the

defendant Blackwood for $6,325, which was the highest bid therefor; and according to the terms of sale, the original sum of $5,000 loaned by this defendant, as in his answer stated, was allowed to remain secured upon said property and to that end the said Blackwood executed his promissory note therefor, payable to the order of the aforesaid trustees four years after the day of sale, with interest at nine per centum per annum, payable semi-annually; and said note was endorsed by said trustees "without recourse," and delivered to this defendant, together with the deed of trust mentioned, to the defendants Augustus Davis and M. Ashford, trustees, securing said note, which stands in the place and stead of the note of $5,000 executed by the defendant Ada M. Sweet, and represents the identical debt secured by the trust foreclosed as aforesaid; and defendant is now the holder of said first-mentioned note, no portion of which has been paid.

32 Further answering, this defendant says that at the time of the sale aforesaid and of the execution and delivery of the said promissory note by the said Blackwood, and of the deed of trust to secure the same, and for a long time subsequent thereto, to wit, up to the filing of the bill in this cause, he had no information, or even suspicion, of the alleged unsatisfied claim of the plaintiffs, under the trust to the defendants Charles T. Davis and William Stickney; on the contrary, he avers that the land records of the District of Columbia contained express notice to the world that no such claim existed upon said ground and premises; wherefor this defendant relies upon the legal and equitable priority of the security of said trust to the defendants Augustus Davis and Mahlon Ashford, and insists thereon.

And having fully answered, &c.

SAM'L T. WILLIAMS.

DISTRICT OF COLUMBIA, *ss:*

I make oath that I am one of the defendants in the above cause; that I have read the foregoing amended answer, and that the facts therein stated are true.

SAM'L T. WILLIAMS.

Subscribed and sworn to before me this 5th day of February, A. D. 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

Answer of R. K. Elliot.—Filed Feb. 5, 1878.

In the supreme court of the District of Columbia.

B. L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } 5950. Eq. Doc.

The separate answer of R. K. Elliot, one of the defendants named in the bill of complaint in this cause.

This defendant, answering so much of said bill as refers to him, says: That some time in July last (1877) he was notified that he was one of

the trustees named in a certain deed of trust executed by Ada M. Sweet upon sublot 49, in square 513, and upon the written request of the defendant, Saml. T. Williams, the holder of the note thereby secured, he
33 advertised with his cotrustee said property for sale at public auction, and on the day of the same month sold the same, according to the name given, to one E. S. Blackwood, for $6,325, and after the lapse of several weeks the terms of sale were complied with by the execution and delivery by said Blackwood of his promissory note for $5,000, secured by deed of trust upon the property, and the payment of the remainder of the purchase-money in cash or by proper credits, whereupon the note secured by the trust under which the sale was made was cancelled and the new note for a like amount as aforesaid delivered by the trustees, together with the deed of trust, to the defendant Williams, this defendant and his cotrustee, Charles T. Davis, joining in the execution and delivery of a deed of conveyance to said Blackwood.

This defendant had not at the time referred to, nor has he now, any personal knowledge respecting the other matters and things alleged in the bill. Nor had he at that time, or until the commencement of this suit, or just prior thereto, any information touching the alleged claim of the plaintiffs.

The memorandum of said sale, together with the distribution of the proceeds, is in the possession of this defendant, and, as a matter of course, accessible if required.

And having fully answered, &c.

R. K. ELLIOT.

Subscribed and sworn to before me this 5th day of February, A. D. 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

Answers of Augustus and Charles T. Davis.—Filed Feb. 13, 1878.

In the supreme court of the District of Columbia.

JACKSON BROS. & CO.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950.

The joint and several answer of the defendants Augustus and Charles T. Davis.

For answer to the bill of complaint in this cause these defendants, saving to themselves all manner of exceptions, &c., for themselves, and each of them, answering, say:

They admit 1st and 2d paragraphs of said bill.

34 They deny all and every averment of the 3d, 4th, and 5th paragraphs of said bill contradictory of or inconsistent with the following state of facts:

The defendants Sweet executed the deed of trust mentioned in the 3d paragraph to secure four promissory notes drawn by them to the order of defendant Augustus Davis, three for the sum of $1,833.33, and one for the sum of twenty-five hundred dollars.

The first three notes were endorsed by the payee thereof and delivered to the complainants in settlement of a promissory note of said defendant for $5,000, then held by them, which said note was unsecured. Defendants' said note was thereupon surrendered by complainants, and the three notes aforesaid substituted in its stead. The other note, to wit, the one for $2,500 was endorsed—was some time afterwards endorsed by both of these defendants and delivered to complainants by Charles T. Davis in consideration of the exchange and surrender of certain other promissory notes likewise unsecured. There were numerous transactions, covering a long period and involving a large amount of money, between complainants and Charles T. Davis, and they were in the habit of discounting paper endorsed by these defendants without security. The aforesaid notes were accepted by complainants entirely upon the faith and credit of the endorsements and guaranty in the ordinary course of the business transactions between complainants and the defendants Charles T. Davis. No deed of trust was ever shown to them, and they did not know said notes were secured, and did not look to the property involved in this suit as security for the payment of them.

In June, 1876, defendant Sweet desired to effect a loan upon said property from defendant Williams, and the deed of trust was released as stated in the paragraph of said bill.

Defendant Sweet informed defendant Charles T. Davis that the notes held by complainants had been settled, and believing and trusting his said statement, he was induced to execute said release.

The defendant Augustus Davis signed the same at the request of defendant Charles T. Davis.

He, at that time, held one of said notes which had been paid and surrendered by complainants, and he presumed his signature as such holder, and as beneficiary of said trust was necessary to the release, and that everything was straightforward and regular.

These defendants emphatically and positively deny that there was any combination or conspiracy between themselves or with any other person or persons to cheat the complainants or injure or defraud them of their security.

The aforesaid release was executed upon the faith of the aforesaid statement of defendant Sweet, and the defendant Charles T. Davis did not consult complainants, because he knew that they had accepted said notes upon the strength of the endorsement and guaranty as aforesaid, and not upon any other security, and the release of the trust was substantially in good faith with complainants.

35 These defendants aver that at the time said notes were endorsed to complainants, as well as at the time of the execution of said release, they were in a good financial condition, doing a large business, the owners, jointly and severally, of a large amount of real estate, and their joint and individual credit unimpaired.

6 and 7. These defendants admit the averments of the 6th and 7th paragraphs of said bill.

8. They neither admit nor deny the averments of the 8th paragraph and call for proof thereof if material to them.

9. The defendant Augustus Davis neither admits nor denies the averments of the 9th paragraph of said bill, as he has no personal knowledge

on the subject. The defendant Charles T. Davis admits the averments of said paragraph, excepting in so far as the sale therein referred to is termed "pretended," which statement is unwarranted, as the said sale was, in all respects, regular, fair, and bona fide.

10. Defendants admit the averments of the 10th paragraph of said bill in so far as they refer to them, excepting the reference to release of said property in these words: "Fraudulently attempted to be released." These defendants reiterate that said release, as far as they are concerned, was not executed from motives of fraud or deception.

11. The defendant Charles T. Davis admits the averments of the 11th paragraph of said bill.

Answering the 12th paragraph of the bill, the defendant Charles T. Davis denies that the release referred to was not recorded until after the said deed of trust to secure defendant Williams, and both defendants deny that said Williams had notice of the claim of complainants through these defendants, or either of them. He denies that the sale therein referred to was made in pursuance of any "secret understanding" between himself and the defendants Blackwood and Sweet, to benefit the latter, and he avers that he and his cotrustee, Elliot, were directed by the holder of the notes in the usual way to execute the trust, and far from being for the benefit of Sweet; it was made contrary to his desires and wishes, and was postponed from time to time at his request, to allow him a chance to pay the interest and avoid the sale.

He denies the conclusion of law attempted to be drawn, that the sale to Blackwood was null and void, and he avers that the amount realized from the said sale was all that the property was reasonably worth.

Further answering, these defendants say that the promissory notes referred to in the paragraph of said bill have been sued upon the law side of this court by the complainants, and judgments recovered thereon against defendants and they submit that complainants should be remanded to their remedy at law upon said judgments and the bill in this suit should be dismissed.

36 The records of law cause No. , hereby referred to as part of this answer. And having fully answered, they pray that they may be dismissed with costs, &c.

CHARLES T. DAVIS. [SEAL.]
AUGUSTUS DAVIS.

CHARLES A. ELLIOT,
Solicitor for Defendants.

We do solemnly swear we have heard read the foregoing answer, by us subscribed, and know its contents, and the facts therein stated upon our personal knowledge are true, and those stated on information and belief we believe to be true.

CHARLES T. DAVIS.
AUGUSTUS DAVIS.

Subscribed and sworn to before me this 11th day of February, A. D. 1878.

[SEAL.] MICH. P. CALLAN,
Notary Public.

Answer of Ida S. Davis.—Filed Feb. 13, 1878.

In the supreme court of the District of Columbia.

JACKSON BROS. & CO.
vs.
ELI S. BLACKWOOD ET AL.

The separate answer to the defendant Ida S. Davis to the bill of complaint in this suit.

For answer to said bill, or so much thereof as she is advised it is necessary and proper for her to answer, this defendant, reserving to herself all manner of exception, &c., answering, says:

1, 2. She admits the averments of the 1st and 2d paragraphs of said bill.

3. She has no knowledge of the averments of the other paragraphs of said bill, excepting the 11th paragraph thereof, and she neither admits nor denies the same, and calls for proof hereof, if material to her.

Answering the 11th paragraph of said bill, this defendant admits the conveyance therein mentioned from defendant Blackwood to herself and the instituting of the proceedings in law cause No. 18649.

37 And having fully answered, she prays she may be hence dismissed with her costs, &c.

IDA S. DAVIS.

CHAS. A. ELLIOT,
Sol. for Def't.

Subscribed and sworn to before me this eleventh day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] MICH. P. CALLAN,
Notary Public.

Proof of publication.—Filed Feb. 13, 1878.

In the supreme court of the District of Columbia, the 13th day of December, 1877.

On this 13th day of January, A. D. 1878, personally appeared before me, the undersigned, a notary public in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz, that affiant is the publisher of the Washington Law Reporter, a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said Washington Law Reporter once a week for three successive weeks, commencing on the 17th day of December, 1877.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

[SEAL.] L. P. WILLIAMS,
Notary Public.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

On motion of the plaintiffs, by Messrs. Edwards & Barnard, their solicitors, it is ordered that the defendant Eli S. Blackwood cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

A. WYLIE, *Justice, &c.*

True copy. Test:

R. J. MEIGS, *Clerk, &c.*
By M. A. CLANCY, *Ass't Clerk.*

38 *Decree pro confesso vs. defendants Blackwood and Addie M. Sweet.*

In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

It appearing to the court that the order for the appearance of the defendant, Eli S. Blackwood, made herein December 13, 1877, has been duly published in the Washington Law Reporter for three successive weeks, commencing on the 17th day of December, 1877; and that the said defendant has not caused his appearance to be entered herein as required; and it further appearing that the defendant Addie M. Sweet, after personal service of process upon and entry of appearance herein by her, has failed to answer, plead, or demur to the bill as required by the rules of court:

It is therefore, this 13th day of February, 1878, ordered, adjudged, and decreed that the bill be, and the same is hereby, taken pro confesso as against each of the said defendants.

By the court:

MACARTHUR, *Just.*

Answer of Mahlon Ashford.—Filed February 15, 1878.

In the supreme court of the District of Columbia.

JACKSON BROS. & CO.
vs.
ELI S. BLACKWOOD ET AL. } 5950. Eq.

The separate answer of Mahlon Ashford, trustee, to the bill of complaint in this suit.

For answer to said bill, or so much thereof as he is advised it is necessary and proper for him to answer, this defendant, saving all manner of exception, answering says:

Having no personal knowledge of the averments contained in any and all the paragraphs in said bill (exceptings the 7th paragraph), he neither admits nor denies them, but calls for proof thereof if material to him.

He admits the execution of the deed of trust referred to in the seventh paragraph of the bill. And having fully answered he prays he may hence [be] dismissed, &c.

M. ASHFORD.

39 Sworn and subscribed to before me this 15th day of February, A. D. 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Asst. Clerk*.

Answer of J. Stanley Jones.—Filed February 15, 1878.

In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON ET AL. *vs.* ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

The answer of J. Stanley Jones, one of the defendants in this cause, to the bill of complaint of the above-named complainants.

For answer to said bill, or so much thereof as I am advised it is material for me to answer, I say as follows:

First. I believe the allegations contained in the first and second paragraphs of the said bill to be substantially true as stated.

Second. The facts stated in the eighth paragraph of said bill are also substantially true as stated. The note for $650, therein mentioned, was duly endorsed to me by the defendant Pairo, and the consideration for which said note was given has been satisfied and the said note duly cancelled by me in pursuance of a subsequent agreement between myself and the maker of said note. That at the time of such agreement and cancellation I was the bona fide holder and owner of said note, and the trust deed given to secure the same as described in said eighth paragraph is not now a valid lien or encumbrance on the property mentioned in complainants' bill, and I hereby disclaim any interest in said note and trust deed. The original trust deed, and the note secured thereby, as mentioned in said eighth paragraph, I file herewith as a part of my answer.

And having fully answered, &c.

J. STANLEY JONES.

I do solemnly swear that I have read the aforegoing answer by me subscribed and know the contents thereof, and that the facts therein stated are true to the best of my knowledge and belief.

J. STANLEY JONES.

Sworn to and subscribed before me this 4th day of February, A. D. 1878.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst.*

40 *Answer of Richard E. Pairo.—Filed February* 15, 1878.

In the supreme court of the District of Columbia.

JACKSON BROTHERS & CO.
vs.
BLACKWOOD ET AL. } No. 5950. Equity.

The answer of Richard E. Pairo, one of the defendants in this cause, to the bill of complaint of the above-named complainants.

For answer to the said bill, or so much thereof as I am advised it is material for me to answer, I say as follows:

First. I believe the allegations contained in the first and second paragraphs of said bill to be substantially true as stated.

Second. The facts stated in the eighth paragraph of said bill are also substantially true as stated. The note for $650, mentioned in said eighth paragraph, was duly endorsed by me, "without recourse," before maturity to the defendant Jones, and passed by me to him; and I disclaim any interest in said note and in the trust deed given to secure the same. I have been informed and believe said note has been cancelled.

And having answered, &c.

R. E. PAIRO.

DISTRICT OF COLUMBIA, *ss:*

I do swear that I have read the aforegoing answer by me subscribed, and know the contents thereof, and that the facts therein stated of my own knowledge are true, and that the facts stated upon information and belief I believe to be true.

R. E. PAIRO.

Sworn to and subscribed before me this 4th day of February, A. D. 1878.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Asst.*

Replication.—Filed February 15, 1878.

In the supreme court of the District of Columbia.

JACKSON, BROTHER & CO.
vs.
BLACKWOOD ET AL. } No. 5950. Equity.

The complainants hereby join issue with the defendants Charles T. Davis, Ida S. Davis, Edwin J. Sweet, Augustus Davis, Robert K. Elliot, Mahlon Ashford, J. Stanley Jones, William Stickney, Richard E. Pairo, Samuel T. Williams, and The Citizens' National Bank of Washington City, on their several answers filed herein.

EDWARDS & BARNARD,
Solicitors for Complainants.

41, 42 *Depositions behalf compl'ts.—Filed Sep.* 2, 1878.

[Examiner's caption to depositions of complainant.]

In the supreme court of the District of Columbia.

JACKSON ET AL
vs.
BLACKWOOD ET AL. } In equity. No. 5950. Doc. 17.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses, begun and held on the 28th day of February, A. D. 1878, and continued from time to time by adjournment until the 5th day of July, A. D. 1878, when the within depositions were taken, I, John N. Oliver, an examiner in chancery, did cause to be personally present at the office of Edwards & Barnard, No. 503 D street, northwest, in the city of Washington, in said District, the witnesses whose depositions are herewith returned to testify on the part and behalf of the plaintiffs in a certain cause now depending in the supreme court of the District of Columbia, wherein Jackson, Bro. & Co. are complainants and Elis S. Blackwood et al. defendants.

43 *Notice of time of taking depositions.*

In the supreme court of the District of Columbia, the 26th day of February, 1878.

B. L. JACKSON ET AL.
vs.
ELIS S. BLACKWOOD ET AL.

I am directed by Messrs. Edwards & Barnard, solicitors for the plaintiff, to notify you that testimony will be taken on the part and behalf of the plaintiffs in the above-entitled cause at the office of said Edwards & Barnard, No. 503 D street, NW. Washington City, D. C., before the undersigned, an examiner in chancery, on Thursday next, February 28, 1878, at 1 o'clock p. m.

JOHN N. OLIVER,
Examiner in Chancery.

To WILLIAM A. MAURY & R. K. ELLIOT, Esq'rs,
Solicitors for Sam'l T. Williams.
To WALTER S. COX, Esq.,
Solicitor for William Stickney.
To M. BLAIR & SON,
44 *Solicitor for Citizens' National Bank.*
To EDWIN J. SWEET, Esq.
To CHARLES A. ELLIOT,
Solicitor for Augustus, Charles T., and Ida I. Davis.
To J. STANLEY JONES.
To RICHARD E. PAIRO, Esq.

45 *Depositions behalf compl't.*

JACKSON ET AL. *vs.* BLACKWOOD. } Equity 5950. Doc. 17.

FEBRUARY 28, 1878—1 p. m.

Met pursuant to notice to take testimony on the part and behalf of the plaintiffs.

Present, Messrs. Edwards and Barnard, solicitors for the plaintiffs; Charles A. Elliot, esq., counsel for Augustus, Charles T., and Ida S. Davis, and R. K. Elliot, esq., of counsel for Samuel T. Williams, and Edwin J. Sweet p. p.

Whereupon SIDNEY Y. SMITH, a witness produced, sworn, and examined, in answer to questions by Mr. EDWARDS, did depose as follows:

Int. 1. Where do you reside?

A. At 713 9th st., NW., in this city.

Int. 2. How long have you resided in this city?

(Objected to by Mr. R. K. Elliot as a matter of no consequence.)

A. About 20 years.

Int. 3. Do you know Charles T. Davis, the son of Augustus Davis, of this city?

A. Yes, sir.

Int. 4. How long have you known him?

A. About 10 years.

46 Int. 5. Where you ever in his employ; and, if so, how long?

A. I was in his employ about 3 years, from August 15, 1874, to October 15, 1877.

Int. 6. In what capacity were you employed by him during this period?

A. As clerk.

Int. 7. What were your duties?

A. Anything at all he asked me to do—any reasonable. He never asked me anything but what was reasonable.

Int. 8. Did you or not keep any books for him, or draft deeds of conveyance or copy papers, in your capacity as clerk?

A. Yes, sir; I did. I did keep books, draft deeds, and copy papers.

Int. 9. Since the time you first went to work for Charles T. Davis up to the time you left, were you continuously in his employ as a clerk?

A. Yes, sir; I was.

Int. 10. What books did you keep for Mr. Davis, or write in under his direction, either in the shape of a record or a book or books of account?

A. The journal, bill book, abstract book, and ledger.

Int. 11. Did you keep for Mr. Davis a cash book?

47 A. No, sir.

Int. 12. Where were the daily transactions posted, if posted at all, I mean the daily transactions of money matters.

A. All I ever posted I posted in the journal.

Int. 13. When did you last see this journal, and where?

A. The last time I saw it was on the 15th of October, 1877, at 615 7th street, NW., at the office of Mr. Charles T. Davis. It was in his office, and I suppose in his possession and control.

Int. 14. During the time you were in Mr. Davis' employ, did he keep any bank account; and, if so, with what banks in this city?

(Objected to by Mr. C. A. Elliot.)

A. Yes, sir, he did; with the 2nd National Bank and the Metropolis Savings Bank and Riggs & Co.

Int. 15. During the time you were in Mr. Davis' employ as a clerk, what business was he engaged in?

A. He was engaged in the real estate business.

Int. 16. Did he or not transact business as a real estate agent and the negotiation of loans?

48 A. Yes, sir; he did occasionally.

Int. 17. Did he or not negotiate and procure loans on promissory notes other than his own?

(Objected to by M. C. A. Elliot, unless witness knows of his own personal knowledge.)

A. Yes, sir; I believe he did.

Int. 18. Was he or not engaged in the business you have stated during the year 1876?

A. Yes, sir; he was.

Int. 19. Do you know Mrs. Edwin J. Sweet?

A. No, sir; I don't believe I would know her if I saw her.

Int. 20. Did you ever see her in the office of Mr. Charles T. Davis?

(Objected to by Mr. C. A. Elliot, because witness has already stated that he does not know her.)

A. I am not sure, but have a slight remembrance that Mr. Sweet brought some lady there who signed the name of Addie M. Sweet, but don't know whether it was his wife or not.

Int. 21. Do you know Mr. Samuel T. Williams; and if so, did you ever see him in the office of Charles T. Davis?

49 A. Yes, sir; I know him, and have seen him there several times.

Int. 22. Do you know what his business was there, if any?

A. I don't know for certain.

Int. 23. Do you recollect of drawing a deed of trust from Edwin J. Sweet and his wife, Addie M. Sweet, to secure a $5,000 note to the order of Samuel T. Williams or S. T. Williams?

A. I remember drawing a deed of trust, but don't remember whether it was for $5,000 or not.

Int. 24. Do you recollect of drafting more than one deed of trust from Mr. & Mrs. Sweet to secure a note or notes to the order of said Williams?

A. I think I drew another one, but am not certain.

Int. 25. Do you recollect Mr. Charles T. Davis negotiating a loan on a deed of trust from Mr. and Mrs. Sweet in September, 1876?

A. I recollect drawing the papers, but do not know anything else about it.

Int. 26. Do you recollect Mr. Williams giving a check on Riggs & Co. to the order of Charles T. Davis for $5,000 in September, 1876,

50 or a check on any bank for that sum in the month stated?

A. I remember him giving Mr. Davis a check for that amount, but don't know whether it was payable to Mr. Davis' order, or not, nor the date.

Int. 27. Do you know what was done with that $5,000 check?

A. No, sir; I do not. I am not certain whether I deposited it or not, but think not.

Int. 28. Preceding the preparation of the Sweet deed of trust you have mentioned, do you know of Mr. Davis negotiating any other loans with Mr. Samuel T. Williams?

(Objected to by Mr. R. K. Elliot as irrelevant.)

A. I do not know whether he negotiated any previous to that or not.

Int. 29. Do you know of his negotiating any other loans either before or after this transaction in September, 1876, with Mr. Sam'l T. Williams?

(Objected to by Mr. C. A. Elliot as wholly outside of this case.)

A. I think he did.

Int. 30. Name them, if you recollect.

(Objected to by Mr. R. K. Elliot on the ground that if the loans were matters of record the record is the best evidence.)

A. I do not remember what they were.

Int. 31. Examine the paper attached to the answer of Samuel T. Williams, filed in this cause January 2, 1878, named in the answer as S. T. W.'s Exhibit No. 1, and state in whose handwriting it is.

A. It is in my handwriting.

51 Int. 32. How came you to make that copy, and where were you employed at the time?

A. I made the copy by request of Mr. Charles T. Davis. I was employed by him at that time.

Int. 33. At whose request did you draft the Sweet deed of trust you have mentioned, and in whose employ were you at the time?

A. I did it at the request of Charles T. Davis. I was there in his employ.

Int. 34. Do you recollect Mr. Davis obtaining money from Mr. Samuel T. Williams on notes made by Seth A. Terry?

(Mr. R. K. Elliot desires the fact to be noted that counsel for the plaintiff admits that there is a separate suit pending in relation to the Terry notes, and he, as counsel for Mr. Williams, objects to the question.

Mr. Edwards, of counsel for the complainant, does not admit what Mr. Elliot has stated.)

A. No, sir; I don't recollect it.

Int. 35. What were the matters of conversation about at the interviews or meetings between Mr. Sam'l T. Williams and Davis during the period the negotiations for the Sweet loan of $5,000 were pending?

(Objected to by Mr. C. A. Elliot.)

A. I don't remember of ever hearing any. They generally had private conversations.

52 Int. 36. Do you recollect of ever depositing any check drawn by Samuel T. Williams, in bank, to the credit of Charles T. Davis?

(Objected to by Mr. C. A. Elliot.)

A. I am not sure, but I think I did.

Int. 37. At what bank did Mr. Charles T. Davis last keep his account during the time you were employed by him, if you recollect?

(Objected to by Mr. C. A. Elliot.)

A. I believe he had accounts at 2 banks, Riggs & Co., and the Southwark National Bank, Philadelphia.

Int. 38. How would he deposit money or funds in this bank in Philadelphia?

(Objected to by Mr. C. A. Elliot.)

A. He generally sent a draft over.

Int. 39. Where did he purchase the drafts?

A. At Riggs & Co.'s.

Int. 40. When, if you recollect, did he first commence to purchase drafts from Riggs & Co. for the purposes of deposit in this Philadelphia bank?

(Objected to by Mr. C. A. Elliot.)

A. I don't remember exactly. It was in 1876, but I don't remember the month.

53 Int. 41. Was it in the summer or fall, if you recollect?

(Objected to by Mr. C. A. Elliot.)

A. I think it was in the fall, but don't recollect certain.

Int. 42. Do you recollect of purchasing by Davis of any draft to deposit in this Philadelphia bank, prior to the loan negotiated on the Sweet trust from Sam'l T. Williams in September, 1876?

(Objected to by Mr. C. A. Elliot.)

A. I want to correct my answer to the last question, and say that it was in the spring or early summer of 1876. In reply to int. 42, I say I think it was.

Int. 43. Did you ever go to Riggs & Co. to purchase drafts for Mr. Charles T. Davis for the purpose of this deposit in Philadelphia?

A. Yes, sir; I think I did.

Int. 44. Can you recollect the last draft you thus obtained for this purpose?

(Objected to by Mr. C. A. Elliot.)

A. It was in 1876, but I don't remember. I don't remember the amount or date of any of the drafts, but I remember going there.

54 Int. 45. Do you recollect a sale made last July of the property immediately adjoining on the east the residence of Augustus Davis, the father of Charles T. Davis, known as the Sweet property?

A. I remember that that property was sold.

Int. 46. Did you, after the sale, have anything to do in the preparation of deeds or papers, or in the payment of the expenses of sale after it was sold?

A. I believe I drew the deed up from the trustees to Mr. E. S. Blackwood, but had nothing to do with paying out money. The paper marked J. N. O. No. 1 is in my handwriting.

(The paper is in the hands of Mr. R. K. Elliot, now present, who to produce it again when called for.)

WITNESS. I prepared the deed to Blackwood and the statement marked J. N. O. No. 1, at the request of Mr. Davis.

Int. 47. During the meetings and conversations you have mentioned that took place between Mr. Sam'l T. Williams and Charles T. Davis in the office of the latter, was any person engaged with them in the conversation, that you recollect?

(Objected to by Mr. R. K. Elliot, for reasons apparent upon its face.)

55 A. I don't remember of any.

Int. 48. Have you or not seen Sam'l T. Williams and Charles T. Davis in the office of the latter in conversation together?

(Objected to by Mr. R. K. Elliot, unless it is shown to be unlawful to hold a conversation with Charles T. Davis.)

A. Yes, sir; I have.

Int. 49. Please state whether you did not see them in conversation together in Davis' office in September, 1876, when the Sweet loan was negotiated.

(Objected to by Mr. R. K. Elliot as leading.)

A. I think I did see them.

Cross-examination by Mr. R. K. ELLIOT:

Int. 50. Between the dates you have given in respect of the time of your employment by Davis were you in daily attendance at his office?

A. No, sir; there were times when I was absent.

Int. 51. Were you familiar with all of Davis' employés and agents?

A. I was with all those that came to the office.

Int. 52. Who were his attorneys in 1876?

56 A. He had several: Messrs. Edwards & Barnard, and R. K. Elliot.

Int. 53. Are you certain about R. K. Elliot?

A. I am not certain; but I have been to see Mr. Elliot at the request of Mr. Davis.

Int. 54. Will you state when?

A. I was thinking about 1877, in regard to Mr. Elliot; but I think in 1876 he had Messrs. Edwards & Barnard.

Cross-examination by Mr. C. A. ELLIOT:

Int. 55. Do you know, of your own knowledge, when the account of Charles T. Davis with the Southwark National Bank of Philadelphia was opened?

A. I do not know, for sure.

Int. 56. Do you know, of your own knowledge, that drafts were sent by Mr. Davis to the Philadelphia bank for the first time in the spring of 1876?

A. I am not certain, but think it was.

Int. 57. Might he not have had an account with that bank in 1875?

A. Yes, sir; he might, and I think he did.

57 Int. 58. Do you recollect having purchased drafts for him in 1875 for the purposes of this deposit?

A. No, sir; I do not.

Int. 59. Do you know Edwin J. Sweet?

A. Yes, sir.

Int. 60. Did you not see him in the office of Charles T. Davis frequently prior to the 27th day of September, 1876?

A. Yes, sir; I did.

Int. 61. Do you know what his business was about that time with Charles T. Davis?

A. Mr. Davis held some notes drawn by Mr. Sweet, and when they came due Mr. Sweet came in and wanted him to extend the time. He came to see him in relation to some notes he held, and would also come in to borrow money.

Int. 62. Did Mr. Sweet ever speak to you as to the preparation of a deed of trust from Addie M, Sweet and her husband, Edwin J. Sweet, in September, 1876?

A. No, sir; I don't remember of his ever speaking to me. He never spoke to me about it, that I remember.

Int. 63. Did he speak to Mr. Davis about the preparation of
58 that deed of trust in your presence?

A. Yes, sir; I think he did.

Int. 64. Did he not instruct Mr. Davis to have such trust prepared?

A. Yes, sir; he did.

Int. 65. Did not Mr. Davis usually get you to prepare trusts or other papers of that nature that he had been requested to have prepared?

A. Yes, sir; he did.

Int. 66. The preparation of this trust was then made in the ordinary course of your duties?

A. Yes, sir; it was.

Redirect by Mr. EDWARDS:

Int. 67. When you say Mr. Davis held some notes drawn by Mr. Sweet, please state when you last saw in the possession of Charles T. Davis any notes of Mr. Edwin J. Sweet, and state whether they were secured or not.

(Objected to by Mr. C. A. Elliot.)

A. I don't remember when I last saw them, but it was before I
59 left Mr. Davis. I believe some were secured and some were not.

Adjourned to March 2d, 1878, at 2 p. m.

MARCH 2, 1878—2 p. m.

Met pursuant to adjournment. Counsel present as before.

SIDNEY Y. SMITH resumes:

Int. 68. Upon what property was the secured notes?

(Objected to by Mr. C. A. Elliott.)

A. I don't remember of any other property than 437 M street NW. There was other property, but I don't remember where it was. 437 M st. is on sub-lot 49, in square 513.

Int. 69. How long before you left Mr. Davis was it that you last saw any notes of either Edwin J. or Addie M. Sweet secured on this property in the possession of Charles T. Davis?

A. I don't think I ever saw them after I drew them up.

Int. 70. Did you not contemporaneous with your drafting the deed now shown you, marked Exhibit J. N. O. No. 2, draft other notes, and a deed of trust to secure them from Mr. & Mrs. Sweet?

60 A. Not that I remember.

Int. 71. Have you not seen in Mr. Davis' possession, since the date of this Williams trust, certain other notes of Mr. & Mrs. Sweet which were secured on this lot 49?

(Objected to by Mr. C. A. Elliot, as not being responsive to anything brought out on cross-examination.)

A. I believe there were some other notes, but don't remember whether I saw them before or after. I don't remember what the amounts were or the dates or anything about them.

Int. 72. You state or mention certain attorneys Mr. Davis employed in 1876 and 1877. Did he not employ during the year 1876 Mr. Mahlon Ashford, and did you not often call on him on business matters for Mr. Davis?

A. He employed Mr. Ashford, and I often called upon him.

Int. 73. What was Mr. Ashford's services for Mr. Davis?

A. He acted as an examiner of titles for him.

Int. 74. Did he not examine nearly if not all of the titles of Mr.
61 Davis pertaining to real estate transactions and the negotiations of loans by Mr. Davis?

(Objected to by Mr. C. A. Elliot as immaterial.)

A. Yes, sir; he did.

Int. 75. The original deed from Mr. & Mrs. Sweet to Charles T. Davis and Robert K. Elliot, trustees, to secure the $5,000 to Samuel T. Williams I now hand you, marked Exhibit J. N. O. No. 2. Please state in whose handwriting it is.

(Objected to by Mr. C. A. Elliot as having been all gone over in the direct examination.)

A. It is in my handwriting.

Int. 76. Had Charles T. Davis closed his account with the Southwark National Bank of Philadelphia before you left his employment?

(Objected to by Mr. C. A. Elliot as the question of this bank account was gone over in the direct examination, and it is immaterial as to what time the account was closed, and is an inquiry touching the private business of the defendant, Charles T. Davis, which the complainants have no right to know, excepting in so far as it may be strictly material and pertinent to the issues in this case.)

A. I believe not.

62 Int. 77. Is this the only bank with which Charles T. Davis kept an account or deposited money outside of the city of Washington?

(Objected to by Mr. C. A. Elliot as immaterial, irrelevant, and improper.)

A. It is the only one I have any knowledge of.

Int. 78. What was the amount of the largest money draft you recollect purchasing of Riggs & Co. for Charles T. Davis for the purpose of deposite in this bank in Philadelphia?

(Objected to by Mr. C. A. Elliot as being incompetent, as the best evidence of the amount of the draft is the draft itself; and Mr. C. A. Elliot, counsel for Charles T. Davis, instructs the witness not to answer.)

(On reflection Mr. Elliot withdraws the instruction to the witness.)

A. Five hundred dollars.

Int. 79. How long was this before you left Mr. Davis' employment?

A. I haven't any idea of the time.

Recross-examination by Mr. C. A. ELLIOT:

Int. 80. Do you know why Mr. Davis sent that draft or other drafts to Philadelphia?

A. For deposite.

63 Int. 81. Was not Mr. Davis the agent of a Philadelphia insurance company in this District?

(Objected to by Mr. Edwards as irrelevant.)

A. Yes, sir; he was; I had forgotten that.

Int. 82. Had he not large transactions with business men resident in Philadelphia?

A. Yes, sir.

Int. 83. Was not Mr. Davis in the habit of transmitting large sums of money to the insurance co. and to these other parties?

A. He would generally remit drafts on the Philadelphia—I mean the Southwark National Bank.

Int. 84. Do you mean to say that he never paid those parties, the insurance co., and the other parties in Philadelphia, by means of draft through Riggs & Co., purchased from Riggs & Co.?

A. I don't mean to say that, because I think he sent some drafts direct.

Int. 85. The drafts, then, or some of them that you have mentioned as having purchased for Mr. Davis might have been sent to Philadelphia, to those parties with whom he had transactions, might they not?

64 A. I have purchased drafts for Mr. Davis for that purpose, and have purchased drafts for deposite in the Southwark National Bank.

Int. 86. Did he not transmit checks on that bank to these parties in Philadelphia?

A. Yes, sir; he did.

By Mr. EDWARDS:

Int. 87. What was the name of the insurance co. in Philadelphia, and when did Mr. Davis first become its agent, and was he acting as such agent when you left his employ?

A. The name of the company is the Philadelphia Fire Insurance Co. He became its agent, I think, about July, 1876, and was acting as such when I left him.

Int. 88. Did Mr. Davis keep an account in any book in his office showing his receipts for disbursements on account of and remittances to this co.?

A. Yes, sir; he did.

SYDNEY Y. SMITH.

Sworn to and subscribed before me this 2nd day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

65 MARCH 2, 1878.

Met pursuant to adjournment.

ROBERT K. ELLIOT, being duly sworn, deposed as follows:

I am one of the defendants in this cause, as trustee, and I am of counsel for Samuel T. Williams. I made sale of sub-lot 49, square 513, some time in July last, as one of the trustees named in a certain deed of trust from Addie M. Sweet and E. J. Sweet to Charles T. Davis and myself which trust is recorded in liber 834, folio 320. The sale was made on the 17th of July, 1877, for $6,325. It was "knocked down" to one Eli S. Blackwood.

Int. 1. When this sale took place did you know Eli S. Blackwood, the reputed purchaser?

A. I did not, and according to the best of my recollection I had never seen him knowing that he was Blackwood.

Int. 2. Since this sale have you met a person represented or
66 known to you as Eli S. Blackwood, in respect of the transactions necessary in closing this sale?

A. Within a moment or two after the auctioneer announced the sale I learned that Blackwood was the purchaser; I think at that time I saw him or a person represented to be him either in front of the premises, or in a house adjoining the one sold. It was a house that resembled it and adjoining it. I have never seen the person referred to since, to my knowledge.

Int. 3. How much of the purchase-money for the sale of this property by you and your cotrustee, Davis, was actually paid to you, or passed through your hands?

A. According to the terms of sale $5,000 were secured by note and deed of trust upon the property; of the remainder, $1,325, I cannot speak with accuracy from recollection, and I have not prepared a fair copy of my loose memoranda upon this subject, but I can now state that I received for Mr. Williams $337.50, interest upon the note held by him, my own commissions amounting to $158.12, and $116.85 paid to John A. J.
67 Cresswell for the Citizens' National Bank, holder of part of the notes secured by a second trust upon the property. I do not remember that I received in money that which was paid to the auctioneer, Thomas Dowling, for advertising, &c., or that which was paid on account of taxes and insurance. If counsel desires, and if required, I will furnish a statement showing the money that actually passed through my hands on account of this purchase.

Int. 4. Have you brought with you the deed of trust, the $5,000 note, and the papers and memorandum mentioned in the subpœna heretofore served on you; if so, please produce them?

A. I have the deed of trust under which the sale was made. I have not the note. My recollection is that I cancelled it and delivered it to my cotrustee at the time it was handed to me by Mr. Williams; I have some loose memoranda which I made at the time of the settlement for the purpose of enabling me to state an account of the sale; also receipted bills of expenses; also a paper delivered to me by my cotrustee, which I
68 think was copied by him from one I gave him. The paper referred to is marked J. N. O. No. 1. I decline to file in this cause my vouchers unless compelled to do so by the order of the court. I have brought with me all the papers I have in relation to this suit that I know of, but I prefer not to deliver possession of my vouchers to any one in the absence of an order to that effect.

Int. 5. Will you please describe the papers you have brought in response to the subpœna?

A. No. 1. The advertising bills, attached together.

No. 2. The receipt of the auctioneer for $350 on account of the purchase-money.

No. 3. Duplicate receipt of the collection of taxes for $114.60.

No. 4. Receipt of Samuel T. Williams for $204.01 balance of interest and account of taxes for 1877.

No. 5. Receipt of Charles T. Davis for $35 for insurance and $12.50 interest on taxes for 1876.

No. 6. Receipt of Thomas Dowling for $250 on account of purchase-money.

69 No. 7. Receipt of John A. J. Cresswell for $116.85 on account of 2nd-mortgage notes. Receipt of Charles T. Davis, on the same paper, for $77.74 on the same account.

No. 8. Also memorandum of agreement respecting the application of $110.89 of the proceeds of sale signed by Davis and Elliot, trustees, and Sam'l T. Williams.

No. 9. My own rough statement of the account of sales. These are all the papers I see in my possession now.

Int. 6. Have you not with you accompanying the papers you have just mentioned a number of other papers containing memorandums made by you or your cotrustee, in respect of the settlement of this sale and the distribution of the fund? If so, please produce them.

A. I find in the envelope containing the papers in this case two or three pieces of papers containing figures in pencil and in ink, apparently made by myself, but I must say almost unintelligible to me.

Int. 7. Do I understand you to say that you refuse to leave these papers with the examiner for the purpose of inspection and examination
70 by the complainants or their solicitors. I mean all the papers you have just enumerated?

A. You may understand me, if you think proper, to state precisely what I have already stated to you, to wit, that if you desire any paper in my possession in this case you can have it with pleasure, provided you obtain a consent order to that effect (I will consent), enumerating the papers so that I may hold a voucher for the papers which otherwise I am chargeable with. I leave the deed of trust, which is filed as an exhibit marked J. N. O. No. 2.

MARCH 5, 1875—1 p. m.

Witness resumes: Counsel present as before.

Int. 8. Who handed you the money mentioned in your answer to my 3rd interrogatory?

A. Charles T. Davis; all I received.

Int. 9. From whom did you obtain the advertising bills, receipt of the auctioneer for $350, duplicate receipt of the collector of taxes, and the receipt of Thomas Dowling, per Latimer, for $250 mentioned in your answer to the 5th interrogatory?

71 A. I think the advertising bills were delivered to me by the auctioneer, or they may have been sent by mail. The receipt of Thomas Dowling for $350 was written by him in my office on the day of its date, and was delivered to me by Mr. Dowling. The money that it represents was then and there paid to me by Charles T. Davis. The duplicate tax-receipt and the receipt of Dowling, per Latimer, were, I think, handed to me by Charles T. Davis.

Int. 10. Who delivered to you the $5,000 note made by Eli S. Blackwood to the order of yourself and cotrustee, Charles T. Davis, and the deed of trust from Blackwood to the defendants Ashford and Augustus Davis, given to secure the same, and described in the bill as Complainant's Exhibit No. 6?

A. My recollection is that both those papers were delivered in my office by Mr. Charles T. Davis.

Int. 11. Who called upon you with, and as the holder of, the six notes

secured by the deed of trust described in the 7th paragraph of the bill?

72 A. Mr. Charles T. Davis, according to my recollection, stated that he was the holder of three of those notes, if you refer to the notes secured by a second trust upon the property, and Mr. Cresswell, of the Citizens' National Bank, also produced three of said notes, and the distribution of the surplus proceeds of the sale of the 17th July, 1877, was made between the holders of those notes in moieties, excepting that Mr. Davis was charged with some item of expense which reduced his share. I think it was an advertising bill.

Int. 12. Why was Charles T. Davis charged with any portion of the expense for advertising this property under this trust by you and him?

A. My recollection is that Mr. Davis and Mr. Cresswell met at my office to divide the surplus, and that Mr. Cresswell insisted that his share of the gross surplus should not be abated by reason of the repeated advertisement of this property, the responsibility of which he attributed to Mr. Davis, and insisted upon his full share, which, with Mr. Davis's

73 consent, was paid him; and as the fund was not large enough to pay Mr. Davis the same amount, he (Davis) received the amount and receipted for it, as appears by the papers I have.

Int. 13. What was the first money actually paid on account of this sale and its date, so far as you know?

A. On the day of the sale, and a few minutes thereafter, several parties, including myself, adjourned to a house adjoining the house sold. The settlement was made with the auctioneer, not with me. I think some money was paid to him, but how much I do not know. I remember that he received a draft on Chicago, I think. Whether he received anything else or not, I cannot now say.

Int. 14. When were the next payments made, and the amounts?

A. My recollection is that the next payment was made on the 3rd of August, 1877, $350, as before stated, and on the day to which the sale had been postponed again. I think the next and last payment was made on the 22nd or 23rd of August, 1877; and, according to my rough

74 memoranda, the amount was $353.86.

Int. 15. There appears among your papers pertaining to this sale a bill against Thomas Dowling, dated August 3, 1877, by the Evening Star Newspaper Company, for advertising trust sale, June 29, 1877, Davis & Elliot, 2 times, $15.13. Do you recollect anything about this advertisement, and why it was withdrawn so suddenly?

A. There is nothing on the face of the bill that refreshes my recollection in respect of the property mentioned in that advertisement. I have an indistinct impression, resting upon hearsay, that the original advertisement was discontinued by direction of my cotrustee. At the time I probably knew the fact, but have forgotten it.

(Mr. C. A. Elliot objects to the answer, for reasons apparent on its face.)

Int. 16. Did you, as trustee, after this property was first advertised for sale under this trust, within two or three days, or a short time thereafter, give directions that it be withdrawn or be discontinued?

75 A. My recollection is that I did not give any such direction.

Int. 17. Was any money paid to you or to any one else on account

of the sale of this property on July 17, 1877, by you and your cotrustee Davis, to your knowledge, by any other person than Charles T. Davis. I mean the purchase-money?

(Objected to by Mr. C. A. Elliot, so far as the payment relates to anybody else.)

A. I have no recollection of having received any money on account of this sale at any time from any person other than Mr. Charles T. Davis. Of course I wish to be understood as expressing no opinion whatever as to the ownership of the money delivered to me by Mr. Davis. I do not know, of my own knowledge, of any money being paid by any one else on this account.

Cross-examination by Mr. C. A. ELLIOT:

Int. 18. The money paid to you by Charles T. Davis on account of the sale made by you and him, for all you know, was the money of Eli S. Blackwood, was it not?

76 A. I don't know whose money it was.

Int. 19. Was the sale made by you and Davis as trustees fair and regular?

A. As matter of fact it appeared at the time to be entirely fair and regular. I would not knowingly have made any other sale.

Int. 20. Was the attendance at the sale large?

A. There was a fair attendance and I think several bidders.

By Mr. EDWARDS:

Int. 21. You say that the gross surplus, after satisfying the Williams note and expenses, were divided between Charles T. Davis and Mr. Cresswell as the holders of the six notes secured by the second deed of trust. Did you endorse the amounts so paid on the notes?

A. My recollection is that all that was paid on those notes was all that ought to have been paid thereon, and was endorsed on the several notes.

R. K. ELLIOT.

Sworn to and subscribed before me this 7th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

77 MARCH 5, 1878.

AUGUSTUS DAVIS, being duly sworn, deposed as follows:

I am one of the defendants in this cause; I reside at No. 439 M street, northwest, in this city, next to the property occupied by the defendants, Edwin J. Sweet and Addie M. Sweet, his wife. I have lived there going on three years. I have continuously occupied the property since I moved into it. I am the father of the defendant, Charles T. Davis. My said son resided with me at this house up to about fourteen months ago, from the time I first moved into it.

Int. 1. Do you know anything about a loan negotiated by your son, Charles T. Davis, of $5,000 from one Samuel T. Williams, in September, 1876, for the defendants, Edwin J. and Addie M. Sweet, or either of them?

A. To the best of my knowledge Mr. Sweet was there with Mr. Williams and Charles T. Davis, and they were talking it over. I saw them together and from what transpired I suppose the negotiation was made.

Int. 2. Did you take any part in the matter of the negotiation of this $5,000 loan?

78 A. I think not.

Int. 3. Did you have any conversation about or before the time this loan was negotiated with any person in regard to it?

(Objected to by Mr. C. A. Elliot, on the ground that it is incompetent to inquire as to any conversation this witness may have had with parties strangers to the record.)

A. Not to my recollection.

Int. 4. Did you have any conversation or communication with Mr. Samuel T. Williams in regard to this loan to Mrs. or Mr. Sweet?

A. I don't recollect it at this time.

Int. 5. What is your best recollection in regard to this?

A. To my best recollection Mr. Williams did not ask my advice about this loan at all. If any conversation occurred it was in relation to the value of the house.

Int. 5. How often did you see Mr. Williams and your son in consultation, either alone or in the presence of Mr. Sweet, before it was finally consummated?

A. I cannot say how often; but I saw Mr. Sweet there once.

79 When I saw Mr. Williams, Mr. Sweet was there with him. Mr. Williams was in and out of the office pretty often; but as to this particular loan, I was not advised and cannot say anything about it.

Int. 6. At this time were you acquainted with Mr. Samuel T. Williams? If so, how long had you known him, and the extent of your acquaintance?

A. I was acquainted with him. I borrowed $4,000 from him in 1871 and my acquaintance continued from that time to the present time.

Int. 7. Who comprised the members of the firm of A. Davis & Son in this city, during the year 1876?

A. I don't know that there was any firm about it. I let my son use my name. The firm had been dissolved so far as the partnership was concerned before 1876.

Int. 8. Do you not know that your son used the firm name of A. Davis & Son during the whole of the year 1876? And have you not been sued on obligations incurred by his use of this firm name during the year 1876?

(Objected to by Mr. C. A. Elliot as immaterial.)

79½ A. I do not know that he used it the whole year. I know he used the name of A. Davis & Son, and had my consent to do so. I have been sued on obligations incurred by his use of this firm name during the year 1876.

Int. 9. Who did comprise the members of the firm of A. Davis & Son before it was dissolved, as you have stated?

A. Augustus Davis and Charles T. Davis, myself and son.

Int. 10. Where did this firm transact business, or have its office for the transaction of business?

(Objected to by Mr. C. A. Elliot.)

A. At No. 615 7th st., NW., between F & G streets, in this city.

Int. 11. Did the conversations you have stated in respect of this Sweet loan take place in this office at No. 615 7th street?

A. Yes.

Int. 12. Do you know who comprised the members of the firm of C. T. Davis & Co., architects in this city?

(Objected to by Mr. C. A. Elliot, on the ground that C. T. Davis & Co. are not parties to this suit.)

A. C. T. Davis, my son, and E. S. Blackwood.

80 Int. 13. Where was the office of this firm of C. T. Davis & Co.?

(Objected to by Mr. C. A. Elliot, for the same reason.)

A. In the building No. 615 7th st., N. W., in this city.

Int. 14. Did not this firm of C. T. Davis & Co. transact its business in the same room as the firm of A. Davis & Son?

A. The architect's office was in the rear, and was partitioned off with glass, which, however, did not go up to the ceiling, with a communicating door from room to room.

(Question and answer objected to by Mr. C. A. Elliot.)

Int. 15. How far was the desk used by the firm of A. Davis & Son from that used by C. T. Davis & Co.?

A. My son's desk was about 12 or 15 feet from Mr. Blackwood's desk, which was in the other room.

Int. 16. Did you ever own the house and lot No. 437 M st., known as sub-lot 49, in Augustus Davis' subdivision of lot 8, in square 513, being the property immediately adjoining the property you now occupy on the east

81 A. Yes.

Int. 17. To whom did you sell it, and when?

A. About the 1st of January, 1875, I conveyed it to Mrs. Addie M. Sweet.

Int. 18. What price did you sell it for?

A. My son made the negotiation for me. I think it was $10,000, by way of taking property in exchange and deferred payment.

Int. 19. What were the deferred payments in the aggregate?

A. Eight thousand dollars.

Int. 20. Are you the party to whom the notes given for the deferred payments were made payable, and the person secured by the trust deed from Addie M. Sweet and her husband to your son, Charles T. Davis and William Stickney, described in the bill as Complainant's Exhibit No. 1?

A. I am.

Int. 21. Since you sold or conveyed this property to Mrs. Sweet, has she and her husband & family continuously resided there to the present time?

A. Yes.

Cross-examination by Mr. C. A. ELLIOT:

82 Int. 22. Was there any connection between the business transactions of C. T. Davis & Co. and the business carried on by Charles T. Davis as a real estate broker?

A. No; there was no partnership concern about it. Mr. Blackwood's connection with the firm of C. T. Davis & Co. was, so far as I knew, simply in relation to the architect's business.

Redirect by Mr. EDWARDS:

Int. 23. Do you know, of your own knowledge, what were the articles of copartnership between Charles T. Davis and Eli S. Blackwood under the firm name of C. T. Davis & Co.?

A. I never read over any articles of copartnership. I know they were in business together some three or four months before I went in there. I can't say of my knowledge what the articles , if they had any. Before I took my son in with me, they carried on exclusively the business of architects.

The WITNESS. I think I am mistaken when I say I saw Mr. Williams and Mr. Sweet in Charles T. Davis' office together. I do not think I ever saw Mr. Williams and Mr. Sweet in conversation together
83 there.

AUGUSTUS DAVIS.

Sworn to and subscribed before me this 8th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

MARCH 7, 1878.

Met pursuant to adjournment. Present, counsel as before and Mr. D. O'C. Callaghan on the part of Mr. Sweet. It is also noted that Charles T. Davis has been present at all the previous sessions.

THOMAS DOWLING, being duly sworn, deposed as follows:

I reside in Georgetown, D. C.; my business is that of auctioneer.

Int. 1. Are you the person who sold the property on M street, known as the Sweet property and described particularly in the bill, for Messrs. Elliot and Davis, trustees, on the 17th of July last?

A. I am.

84 Int. 2. What were the terms, according to the advertisement, under which the property was sold?

A. The terms of sale were: "All the purchase-money, excepting $5,000, in cash, and a credit of four (4) years on said $5,000, with interest at nine (9) per centum per annum, payable semi-annually, secured by the note of the purchaser, with a deed of trust on the property sold; all conveyancing at purchaser's cost. A deposit of $250 must be paid at the time of purchase, and the terms of sale must be complied with within one week from the day of sale, otherwise the trustees reserve the right to resell the property at the risk and cost of the defaulting purchaser.

Int. 3. How much of the deposit required by the terms to be paid at the time of the purchase was actually paid in money?

A. Sixty-three dollars in money.

Int. 4. Was anything else delivered to you on the day of sale, on account of this deposit? If so, state what it was.

A. There was a draft on Chicago for $83.33.

Int. 5. Was anything else paid or delivered to you as payment on account of this deposit on the day of sale?

85 A. There was not.

Int. 6. Who, if you recollect, handed you this $63; or what is your best recollection as to who handed it to you?

(Objected to by Mr. C. A. Elliot, unless the witnesse's recollection is distinct.)

A. Charles T. Davis' mother, and Mr. Blackwood, and Charles T. Davis were present; my impression is that Charles T. Davis handed me the money.

(Mr. C. A. Elliot objects to witnesse's impressions.)

Int. 7. Who handed you the draft?

A. I am satisfied it was Charles T. Davis.

Int. 8. Do you recollect any of the parties to that draft, or who was the payee thereof?

(Objected to by Mr. C. A. Elliot, as the draft is the best evidence as to the parties to it.)

A. The payee was Charles T. Davis, I am satisfied.

Int. 9. Was that draft paid?

(Objected to by Mr. C. A. Elliot.)

A. The draft was not paid at the bank when it was due. It was afterwards paid. I deposited it in bank, and it was not paid, and I gave my check to take it up.

86 Int. 10. Can you state what was the next payment on account of this deposit, and when and how it was paid?

A. According to my books the next payment was on the 25th of July, 1876, by check of $103.67.

Int. 11. Was the balance or the amount of this draft ever paid to you so as to make the full sum of $250?

A. My books will show, and my book-keeper can better explain.

Int. 12. Why was the payment of this deposit delayed so long, and did you call upon or have any conversation with Eli S. Blackwood with regard to the non-compliance with the terms of sale?

(Objected to by Mr. C. A. Elliot, as irrelevant and immaterial.)

A. My impression is that we notified Mr. Blackwood by postal card that it was necessary for him to comply with the terms of sale, which I do not think he answered. I do not think I saw him.

Int. 13. With whom was the matter of closing this sale transacted principally?

A. I don't know. My books will show.

Int. 14. Among the trustees' vouchers for disbursements on account of this sale I find a bill of yours against Davis & Elliot, trustees,

87 for advertisement in "Star," $39; was that bill for advertising the sale of this property?

A. It is.

Int. 15. Was that money actually paid to you on August 3, 1877?

A. That I don't recollect.

Int. 16. Will your books show?

A. That I can't say.

Int. 17. I also find a bill dated August 3, 1877, of yours against Davis & Elliot, trustees, for advertising in "The Star" June 29, 1877, 2t., $15.13. Do you know whether that was for advertising this property or not?

A. I do know. It was for advertising the sale of this property.

Int. 18. Why was it discontinued, or upon whose orders?

(Objected to by Mr. C. A. Elliot as immaterial.)

A. Mr. Sweet and Mr. Davis came down and Mr. Davis gave the order to discontinue it.

Cross-examination by Mr. C. A. ELLIOT:

Int. 19. To whom was the Sweet property knocked down?

88 A. It was knocked down to E. S. Blackwood.

Int. 20. What was the attendance at the sale?

A. It was good—fair.

Int. 21. How was the bidding?

A. Good.

Int. 22. Was everything regular and fair about the sale?

A. As far as I was concerned it was regular and fair.

Int. 23. Are you positive in your recollection as to the person who paid the deposit at that sale?

A. My impression is that it was Charles T. Davis. It is more than an impression; I think I am correct.

Int. 24. Are you positive that the order to withdraw the advertisement of this property was made by Davis?

A. Mr. Davis gave that order. It was in writing.

(Counsel for defendant Davis, Mr. C. A. Elliot, here objected to all the testimony of the witness relative to this withdrawal unless the order is produced or accounted for.)

Redirect by Mr. EDWARDS:

89 Int. 25. What did you do with this order given by Davis to discontinue the sale?

A. My impression is that I gave it to R. K. Elliot. I do not know where it is.

THOMAS DOWLING.

Subscribed and sworn to before me this 7th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

HENRY L. ADAMS, a witness produced, sworn, and examined, did depose as follows:

I reside in the city of Washington, D. C.; and am book-keeper for Thomas Dowling, auctioneer.

Int. 1. Have you the account of Thomas Dowling with Davis & Elliot, trustees in the matter of the sale of sub-lot 49, square 513, described in the proceedings, or the book showing the account?

A. I have.

Int. 2. Is the paper now shown you marked Exhibit J. N. O. No. 3, a copy of this account?

A. It is.

90 (It is agreed by and between counsel that the said copy filed and marked Exhibit J. N. O. No. 3, may be read in evidence with the same effect as if the original book was produced.)

Int. 3. How much money was actually paid to Mr. Dowling as shown by the entries in this account?

A. $166.67.

Int. 4. I find under date of August 3, 1877, "adv't'z. $39." Please state how that item of debit against these trustees was settled.

(Objected to by Mr. C. A. Elliot as immaterial.)

A. The copy of the account furnished will show.

Int. 5. I find under date of August 3, 1877, the following on the credit side of this account, "By ⅓ deduc' on adv't, $35.17. Please explain that entry, and how it came to be made.

(Objected to by Mr. C. A. Elliot.)

A. It was claimed by Mr. Charles T. Davis and allowed.

Int. 6. Was that a deduction allowed Mr. Davis from the face of the bills for advertisement?

(Objected to by Mr. C. A. Elliot as bad and incompetent in form and substance.)

91 A. It is.

Int. 7. I find among the receipts or vouchers of the trustees, Elliot & Davis, a receipt dated July 25, 1877, of $250 from Eli S. Blackwood, signed "Thomas Dowling, Latimer." At this date had the draft for $83.33 been returned dishonored?

(Objected to by Mr. C. A. Elliot.)

A. No, sir.

H. L. ADAMS.

Subscribed and sworn to before me this 7th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

Adjourned to March 8, 1878, 1 p. m.

92 SETH A. TERRY, a witness of lawful age, produced, sworn, and examined, deposed as follows:

I reside at 410 2nd street, in this city.

Int. 1. Do you know Mr. Charles T. Davis, the son of Augustus Davis?

A. I do.

Int. 2. Did you know him during the year 1876?

A. I did.

Int. 3. What business was he engaged in during that year?

A. Real estate agent and note broker.

Int. 4. Did you have any transactions with him as a note broker during that year?

(Objected to by Mr. C. A. Elliot.)

A. I did.

Int. 5. Did you ever meet in Charles T. Davis' office Mr. Samuel T. Williams, or was such a person ever introduced to you by that name by Charles T. Davis in his office?

A. I met a gentleman there, and was introduced to him as Mr. Williams. I cannot swear to his christian name, but he was the man that made the $5,000 loan.

93 Int. 6. When was this; and for whom was this $5,000 loan negotiated?

A. It was in June, 1876. It was on my note.

(The counsel for the defendants Davis (Mr. C. A. Elliot) makes objection to any testimony touching promissory notes, loans, or any other transactions, except what is embraced in the subject-matter of this suit, for reasons too plain to mention.)

Int. 7. From whom was this loan negotiated?

(Counsel for the defendants Davis (Mr. C. A. Elliot) objects to any inquiry into any transactions of the defendant Davis, C. T., other than those constituting the subject-matter of this suit, and he respectfully requests that his objections be certified to the court for determination. Mr. Edwards, counsel for plaintiffs, objects to such certification on the part of the examiner.

The examiner declines to certify the objection to the court as not being of a subject contemplated in the 64th equity rule.)

A. Samuel T. Williams.

Int. 8. By whom was it negotiated?

94 A. Charles T. Davis.

Int. 9. In what capacity did Charles T. Davis negotiate this loan.

A. As a note broker?

SETH A. TERRY.

Subscribed and sworn to before me this seventh day of March, 1878.

J. N. OLIVER,
Examiner in Chancery.

MARCH 8, 1878—1 p. m.

Met pursuant to adjournment.

Present, counsel as before, Mr. W. B. Jackson, one of the pl'ffs, and Mr. Sam'l T. Williams, Charles T. Davis, defendants, and William A. Maury, esq., of counsel for defendant Williams.

Mrs. ADDIE M. SWEET, a witness of lawful age, produced, sworn, and examined, deposed as follows:

Int. 1. Are you the wife of Edwin J. Sweet?

A. I am.

Int. 2. Where do you live?

95 A. At 437 M st., NW., in this city, on the property I purchased from Mr. Augustus Davis.

Int. 3. Have you and your family resided in this house since its purchase by you up to the present time?

A. We have.

Int. 4. Who resided in the premises immediately adjoining you on the West?

(Objected to by Mr. C. A. Elliot as immaterial and irrelevant.)

A. Augustus Davis and his family.

Int. 5. Do you know a gentleman by the name of Samuel T. Williams?

A. I do not.

Int. 6. Did you ever have any conversation with or communication with or from Samuel T. Williams in respect of a loan by him of $5,000, or any other sum, to be secured by a deed of trust on the property where you reside?

A. No.

Int. 7. Did any one ever call on you or make inquiry from you in respect of a loan of $5,000, to be secured by a deed of trust on the property you have mentioned?

(Objected to by Mr. C. A. Elliot for reasons very apparent.)

A. No.

96 Cross-examination by Mr. C. A. ELLIOT:

Int. 8. Who transacted your business, usually, for you in the year 1876?

A. I don't know.

Int. 9. Did you transact it yourself?

A. No, sir.

Int. 10. Is it not a fact that your husband, E. J. Sweet, transacts and has always transacted your business for you?

A. He has.

Int. 11. Did yourself and your husband execute a deed of trust to Charles T. Davis and R. K. Elliot to secure Sam'l T. Williams in the sum of $5,000?

(Objected to by Mr. Edwards, as well as the previous question on cross-examination, because not in response to the direct examination.)

A. I presume I did, but I have no recollection of it now. That is my signature on the paper Exhibit J. N. O. No. 2.

Int. 12. At whose request, or by whose direction, did you execute that trust?

A. Really I have no recollection in the matters at all.

Int. 13. Was it not at the request or by the direction of your husband?

97 A. I think not, or I should remember it; I don't remember anything about it.

Int. 14. Do you swear it was not?

A. I think I can safely say not, because I have no recollection of it. I think I should have remembered it, had it been so.

Int. 15. Did not you and your husband, along about the month of September, 1876, and prior to the 27th day thereof, have conversations relative to a loan that he was to negotiate upon your property?

A. No, sir.

Int. 16. Did you know that he was negotiating or endeavoring to obtain a loan about that time?

A. No, sir.

Int. 17. Were you not in the habit of signing such papers as your husband might present to you?

A. I was.

Int. 18. Was not this trust, then, presented to you in the usual way?

A. If it was presented at all, I presume it was. I have no recollection of the matter any way.

Int. 19. You would not have signed a trust presented by somebody else than your husband without some conversation with him about it, would you?

98 (Objected to by Mr. Edwards.)

A. I don't think I did. I don't remember anything about the matter any way.

Int. 20. Had your husband authority to make such transactions respecting your house, 437 M st., as he might think proper?

A. I don't remember ever having any conversation with him about the matter.

Int. 21. Question repeated.

A. Same answer.

Int. 22. Don't you know that he was in the habit of making transactions respecting that property without your knowledge as to the details, and that you assented to such arrangements and gave him full power to act?

(Objected to by counsel for pl'ffs because not responsive to direct examination, and leading.)

A. I had no conversation with him about the matter; know nothing of it.

Int. 23. About other matters?

A. I really don't understand.

Int. 24. I understand that by the impression "the matter," you meant the deed of trust that I had inquired about; am I correct?

A. Yes.

99 Int. 25. Then how do you answer x-int. 22 having reference to other matter?

A. I don't see what other matters have to do with this.

Int. 26. Question repeated.

A. I repeat the same answer.

Int. 27. Do you decline to answer in any other form?

A. Yes.

Cross-examination by Mr. R. K. ELLIOT:

Int. 28. Please examine the paper Exhibit J. N. O. No. 2, and state whether that is your signature at the top of your husband's signature at the bottom.

(Objected to by counsel for pl'ffs, because not responsive to the direct examination, the paper not having been alluded to.)

A. It is my signature and that of my husband.

Int. 29. Did you acknowledge the execution of that paper before Mr. Callan, a notary public?

(Objected to by Mr. Edwards.)

A. I don't remember.

Int. 30. Do you remember that you did not ackowledge it?

A. Remember nothing about it.

100 MARCH 30, 1878.

Examination of Mrs. ADDIE M. SWEET resumed.

Cross-examination by Mr. CALLAGHAN:

X-int. 31. Did you, or anyone for you, to your knowledge, receive any check or draft, or any other order for money, payable to your order, or any cash for the note secured in Exhibit J. N. O. No. 2.

A. No.

X-int. 32. Did you endorse any check or draft, or any other order for money, growing out of said transaction?

A. No.

X-int. 33. Do you know as a matter of fact whether or not the payee, to wit, Samuel T. Williams, of said $5,000 note, paid any consideration therefor?

A. I don't know of his paying any money for it.

ADDIE M. SWEET.

Subscribed and sworn to before me this 20th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

EDWIN J. SWEET a witness produced, sworn, and examined, de-
101 posed as follows:

I reside at 437 M st., n. w., in this city, being the property described in the proceedings. I am one of the defendants in this case.

Int. 1. When this property was purchased by your wife, what was the consideration given for it, I mean the amount?

A. I think it was $10,500.

Int. 2. When this purchase was made, was the house completed, and who first occupied it?

A. The house was not completed when the purchase was made. It was first occupied by myself and family.

Int. 3. Since you moved into it have you improved it in any way, or made any additions to it? If yea, state the nature thereof and the cost.

A. I have improved it; 1st, by adding one story to the kitchen at a cost of $300; and by internal improvements at a cost probably of about $100.

Int 4. Please describe this property, giving particularly the number of rooms, what are its conveniences and internal arrangements, what
102 character of brick used for the front wall, how many stories high, the size of the lot and the nature of the inside trimmings.

A. The house is a three-story and basement, pressed brick front; Ohio stone steps with iron rail; a wooden bay window one-story high. The window-sills are of Ohio stone. The window caps and sides are of wood, covered with galvanized iron. The basement steps are common blue stone. The front door is pine veneered with black walnut; the vestibule door is of the same material as the front door, and all of the doors in the front part of the main building are of the same material. All of the other doors and trimmings throughout the house are of pine. The basement is unfinished and used for coal and furnace only; it has concrete floor. On the first floor there are two parlors, dining-room, and kitchen. On the 2nd floor there are four rooms and a hall room, there is a bath-room and water-closet on the 2nd floor. There is a tin roof over the front and back building. In the 3rd floor there are
103 two rooms and a hall room. The house is heated by a furnace. There is a range in the kitchen. There are stationary porcelain washstands with marble tops and walnut trimmings in four of the chambers. The house is supplied throughout with hot and cold water. The house has the usual modern appliances and improvements. There are large closets in all the rooms, except the parlors, dining-room, and hall room. The lot is 20 feet 2 inches front by 108 feet 8½ inches in depth.

Int. 5. What business are you engaged in and how long have you been thus engaged?

A. In the real estate business for six years.

Int. 6. Have you had experience in valuing property, and are you acquainted with the value where this is located?

A. I have had large experience in valuing property; I am familiar with the value of property in the vicinity of the property in question.

Int. 7. What do you consider the property now in controversy worth?

A. Judging from recent sales in that location, I should value the property at about $7,500.

104 Int. 8. Do you know the defendant Charles T. Davis?

A. I do.

Int. 9. Do you know anything in relation to the negotiation of the loan of $5,000 by defendant Sam'l T. Williams, which resulted in the execution of the trust deed introduced in evidence and marked Exhibit J. N. O., No. 2? If yea, state how that loan came to be negotiated and all you know about it, narrating the circumstances, its inception and how it came to be made.

A. I remember distinctly all about it. Mr. Charles T. Davis stated to me that he had a party who would put $5,000 (Mr. Elliott, R. K., & Mr. Maury object to witness stating any conversations with C. T. Davis, relating to defendant Williams, in the absence of the latter) upon the property named in the bill, and that for the purpose of paying off the indebtedness then resting upon the property he, Davis, would take a second trust upon the property. I directed him to prepare the papers, and that I would have them executed. This trust, dated the 27th day of September, 1876,

105 marked Exhibit J. N. O., No. 2, was executed in due form by myself and wife. Mr. M. P. Callan took the acknowledgment at my residence, 437 M street, n. w. I was present when the acknowledgement of my wife was taken.

Int. 10. How long was it before this trust was executed, if you recollect, that you had your first conversation with Davis with respect to the negotiation of this loan?

(Objected to by counsel for Sam'l T. Williams, because propounded before the witness had completed his answer to the preceding question, the defense having the right to a full answer to that question; and counsel for the defendant Williams, request the examiner to ask the witness whether he had fully answered the last preceding question, before the one objected to was propounded.

Counsel for complainants says he did not intend to interrupt, and did not interrupt the witness, and have no objection to his continuing if he has anything further to say in response to int. No. 9.)

106 By the EXAMINER: Have you fully answered int. No. 9?

A. I was going to continue, when interrupted, to state that I had signed the note for $5,000 secured by this trust prior to the signing the deed at my residence and gave the note to Charles T. Davis.

The deed of trust, when executed by my wife and myself, was delivered to the notary, Mr. Callan, to be delivered to Mr. Davis; that is what I was going to say when interrupted. That is all I have to say now.

(The counsel for defendant Williams insists that witness answers fully, to wit, interrogatory 9. The witness having intimated that he has not answered fully.

Mr. Callaghan, as counsel for witness on the stand, instructs him to answer the questions as they are put by the examiner, and to either continue to answer interrogatory No. 9 or break off and answer No. 10, as said examiner may direct.)

The EXAMINER. Are you going now to continue your answer to interrogatory No. 9, or drop that and answer No. 10?

WITNESS. I will do as you direct.

The EXAMINER. Then if you have not done so, answer interrogatory No. 9 fully?

A. I think I have answered that question.

107 The EXAMINER. Now answer int. No. 10.

Answer to interrogatory No. 10. I think a few weeks transpired before the papers were executed, after my first conversation with him about the loan.

Int. 11. When this loan was negotiated, did you know Mr. Sam'l T. Williams, one of the defendant'?

A. I did not.

Int. 12. Prior to the negotiation of this loan and its final close, did you have any conversation or correspondence with the defendant Sam'l T. Williams, who loaned the money?

A. I did not.

Int. 13. Do you know who paid the note first falling due, described in the bill of complaint in the trust deed, marked Complainants' Exhibit No. 1; I mean the note falling due one year after its date?

A. I do not.

Int. 14. Did you pay it?

(Objected to by Mr. Maury, on the ground that it is a cross-examination of his own witness.)

A. I did not.

Int. 15. When this $5,000 loan from Mr. Williams was nego-
108 tiated, was anything said by Mr. Charles T. Davis to you in regard to the three notes claimed to be held by the complainants, and described in Complainants' Exhibit No. 1?

(Objected to by counsel for defendant Williams, on the ground that the evidence sought is hearsay, and by Mr. C. A. Elliot, counsel for defendants Davis, as to form of the question, i. e., leading.)

A. Mr. Davis said he would take them up and return them to me after the negotiation.

Int. 16. How long was it after the negotiation of this $5,000 loan that you first met the defendant Williams?

(Objected to by counsel for def't Williams, on the ground that the witness has not said that he had ever met the defendant Williams.

Question withdrawn for the present.)

Int. 17. Did you after this loan was negotiated meet the defendant Williams, and if you did, state how long it was thereafter.

A. I met Mr. Williams several months, I think, after the negotiation of this loan, on the sidewalk on the east side of 7th street, near Mr.
109 Davis' office, and was introduced to him by Mr. Charles T. Davis.

Adjourned to March 9, 1878—12 m.

MARCH 9, 1878—12 m.

Met pursuant to adjournment; present, Edwards & Barnard, counsel for pl'ffs, Mr. W. A. Maury, of counsel for Sam'l T. Williams, Mr. Williams, Mr. Callaghan, counsel for Mr. Sweet, C. A. Elliot, counsel for the defendants Davis, and R. K. Elliot of counsel for def't Williams.

EDWIN J. SWEET resumes.

Int. 18. What business was Charles T. Davis engaged in when this $5,000 loan from the defendant Williams was negotiated?

(Objected to by counsel for Williams, as irrelevant.)

A. So far as I know he was engaged in building houses, as a matter of private enterprize.

110 Int. 19. Do you know whether he was engaged in any other business?

(Objected to by counsel for defendant Williams, on same ground.)

A. I do not.

Int. 20. At the time of the negotiation of this $5,000 loan, did you know that the complainants held the three notes described in paragraph 3 of the bill filed in this cause?

(Objected to by counsel for Williams, on the ground that the question assumes a fact to which the witness has not deposed.)

A. I did not.

Int. 21. Was your wife ever in the office of defendant Charles T. Davis, to your knowledge?

A. She never was.

Cross-examinationby R. K. ELLIOT, of counsel for Sam'l T. Williams:

X-int. 22. How long have you been intimate with Charles T. Davis?

A. About four years, I think.

X-int. 23. Were you very intimate with him, having business
111 transactions during that period?

A. During most of the period I was very intimate with him, and had many business transactions with him.

X-int. 24. Give the date, as near as you can remember, when your friendly relations with Davis were first interrupted?

A. About 5 months ago, I think.

X-int. 25. Referring back, state whether that would not be in the early part of October, 1877?

A. I think it was about that time. It was at the time of the commencement of the suit—an attachment for rent of the premises I occupy.

X-int. 26. Do you refer to the suit of Ida S. Davis against yourself, now pending in the supreme court of the District of Columbia, and referred to in the bill of complaint in this cause?

A. I do.

X-int. 27. What length of time elapsed between the sale of the real property described in this bill under Exhibit J. N. O. No. 2, and the date of the commencement of the suit to which you have referred?

A. About 3 months and a half.

112 X-int. 28. And during that period your relations with Charles T. Davis were friendly, were they not?

A. They were.

X-int. 29. Did you, individually, and in company with Charles T. Davis, prior to the sale I have referred to, visit the defendant Williams for the purpose of procuring a postponement of that sale?

A. I did.

X-int. 30. How frequently?

A. But once, I think.

X-int. 31. How often did you apply to me for the same purpose?

A. I think two times.

X-int. 32. Don't you think three or more times?

A. I think not.

X-int. 33. Did you intimate to Mr. Williams or to myself, upon any of the interviews that you had with either, that the deed of trust which had theretofore rested upon the property, had been released without the satisfaction of the notes therein described?

A. I did not.

113 X-int. 34. You were anxious to avoid the sale of this property, under Exhibit J. N. O. No. 2, were you not?

A. I was.

X-int. 35. Did you know at the time of the interviews with Mr. Williams and myself, already referred to, the circumstances under which the prior trust had been released?

A. I did not know the circumstances, but I did know from the representations of the holder of one of the notes, Mr. William Jackson, that said note had not been paid.

X-int. 36. State when you first learned that fact.

A. It was in January, 1877.

X-int. 37. Why was it necessary for you to examine the pleadings in this case before answering the last preceding question?

A. Because it was at about the time that the 2nd note fell due, held by Jackson Bro. & Co., which was in January, 1877, and I wished to be certain as to the date; I thought I was sure without looking at it.

X-int. 38. Then, prior to that date you had no knowledge or information respecting the non-payment of the notes described in the prior trust of January, 1875, that had been released?

A. None whatever.

114 X-int. 39. You say that you first acquired such information from Mr. William B. Jackson?

A. No, sir.

X-int. 40. From whom did you first acquire such knowledge or information?

A. I am not positive, but I think it was from Mr. Wm. E. Howard, a notary public.

X-int. 41. I desire you to refresh your recollection in respect of the subject of the last preceding question, and state positively from whom, and when you first acquired the information referred to.

A. I could not state more positively, but I believe I am correct about it. I have thought of the matter a good deal.

X-int. 42. State precisely what you first did with that information after having received it, and precisely when you first communicated it to any one, and to whom.

A. Upon the same day that I received the information, I saw Mr. Charles T. Davis, and asked him to explain how it happened that one of these notes was outstanding against me. He replied that he
115 would attend to it, and that I need not trouble myself further about it; that I should hear nothing further of it; I insisted upon the return of the notes secured by that former trust; Mr. Davis promised to get them for me, but he never has. I don't remember of communicating the information to any one else.

X-int. 43. This was in January, 1877, was it?

A. Yes, sir.

X-int. 44. Then you did know as matter of fact, between January, 1877,

and October of the same year, that one or more of the notes described in the trust of January, 1875, had not been paid?

(Objected to by counsel for plaintiffs, because it assumes what the witness has not stated.)

A. I did not know it as a matter of fact, but as a matter of information. I did not see the notes.

X-int. 45. Who was the maker of those notes?

A. Addie M. Sweet and Edwin J. Sweet.

X-int. 46. If they had been paid would they not have been delivered to those parties or either of them?

(Objected to by Mr. Edwards.)

116 A. Not necessarily, if cancelled by the trustees.

X-int. 47. Did those parties or either of them demand their surrender and cancellation prior to the interview you had with Charles T. Davis? I refer to the interview in January, 1877.

A. Yes, sir.

X-int. 48. When, where, and in whose presence was such demand made?

A. About the time the loan of $5,000 was procured, and a number of times subsequently. I cannot give the exact dates. Mr. Charles T. Davis at each time replying that he would return them to me, but failed to do so.

X-int. 49. Did you go to see Stickney, the trustee, about them?

A. No, sir.

X-int. 50. Did you occupy the same relation towards Stickney in that transaction that you did towards Charlie T. Davis?

A. I occupied the same relations with Mr. Stickney so far as that instrument was concerned, but not in other matters connected with this transaction.

X-int. 51. Explain what you mean by "other relations."

117 A. I purchased the house through Mr. Charles T. Davis and the notes for the deferred payments were executed, and placed in the hands of Mr. Charles T. Davis. He conducted the whole business.

X-int. 52. What had those facts to do with the surrender of your notes?

A. Please explain what facts you refer to.

X-int. 53. I refer to what you have stated in your last preceding answer.

A. Those facts of themselves would have nothing to do with it, but the fact of his negotiating a new loan for the purpose of taking up the old one would require of him, both as one of the trustees of the former trust, one of the trustees of the new trust, and as having possession of the new note and claiming (I will omit the word "claiming") to see that the notes were cancelled and returned to the drawers.

X-int. 54. You have defined with tolerable accuracy the duty of one trustee named in a deed where there were two; what have you got to say about the "other fellow?"

A. I consider that he is responsible for his own act in signing a
118 release to the former trust without seeing the notes cancelled or knowing that they were paid and cancelled.

X-int. 55. I referred to his duty in the case at issue in respect of the same acts that you state should have been performed by Davis.

A. I think that he also (referring to Mr. Stickney, trustee), as I have stated, should see that the notes were cancelled and returned, or at least cancelled.

X-int. 56. You have had, I believe, a large experience as a dealer in real estate with the custom respecting the execution and delivery of conveyances and evidences of debt secured thereby, have you not?

A. I have; and had at that time.

X-int. 57. The first loan described in the trust of January, 1875, represented a debt of your own, did it not?

A. It represented a debt of my wife and myself.

X-int. 58. Had you paid that debt and received the evidence thereof into your own possession at the time you issued and delivered the note and deed of trust of September, 1876, I mean the Williams note?

119 (Objected to by counsel for pl'ffs, because it has already been answered.)

A. I had not paid those notes at that time. I gave the new note with other notes to accomplish that purpose.

X-int. 59. Did you give the new note with other notes to the two trustees, Davis & Stickney?

A. No, sir.

X-int. 60. Who did Davis represent in that transaction?

A. I don't think he represented anybody, properly.

X-int. 61. Who did Stickney represent?

(Objected to by counsel for pl'ffs, because witness has not stated that Stickney represented anybody.)

A. Mr. Stickney and Mr. Davis, as trustees, were presumed to represent both parties, but they did not properly represent either.

X-int. 62. I ask you, as matter of fact, excluding presumptions of law and fact, who Mr. Stickney represented?

(Objected to by counsel for plaintiffs, because the witness has not stated that Mr. Stickney did represent any one in the transaction.)

A. I am unable to say.

120 X-int. 63. Did he, in point of fact, represent anybody?

(Objected to by counsel for pl'ffs, because not responsive to anything drawn out on the direct examination.)

A. Not to my knowledge.

X-int. 64. Did the other trustee, Charles T. Davis, esquire, in point of fact represent anybody?

A. Not to my knowledge.

X-int. 65. Was anybody represented by anybody in this transaction—I mean the trust and note of September, 1876, Exhibit J. N. O., No. 2?

(Objected to by counsel for pl'ffs, because the question should state whom the "anybody" claimed to have been represented was.)

A. I am unable to say.

X-int. 66. Had you an agent or agents in the transaction?

A. No, sir.

X-int. 67. Did you know of any agent or agents having been employed in that transaction?

A. I do not.

X-int. 68. You were a principal, were you not?

A. I was a principal in the matter of the first trust, and I may

121 say that I was principally interested in the whole business.

X-int. 69. Who was the principal in the trust of September, 1876, securing Mr. Sweet's note of $5,000?

A. Mr. Sweet was one of the principals; the trustees, Messrs. Davis & Elliot, were principals, and possibly I may have signed the note, although I do not think I did. If so, I was another principal. Mr. Samuel T. Williams was another principal.

X-int. 70. Were you a principal in the trust?

A. Yes.

X-int. 71. You have defined the duties of trustees generally, and with reference to this case, and have stated that the debt described in the trust of January, 1875, was created by you. Will you please define the duty of the principals (grantors) to the trust J. N. O., No. 2, with reference to the transaction which resulted in that trust?

A. The duties of the grantors, as I understand them, were to faithfully carry out the provisions of the trust. The provisions of the trust
122 in question require the grantors to pay the instalments of interest when and as they become due, and to pay the note at its maturity, in default of which their property may be sold under other provisions in the trust. That is all, in my opinion, the grantors are required to do. It is the right of the grantors to receive from the trustees of the former trust the cancelled notes to pay which the new trust was executed.

(Objected by counsel for defendant Williams, as not responsive to question.)

Adjourned to March 12, 1878—2 p. m.

MARCH 12, 1878—2 p. m.

Met pursuant to adjournment. Present, Messrs. Edwards & Barnard, counsel for the plaintiffs; Messrs. R. K. Elliot and W. A. Maury, counsel for defendant Williams; Mr. Callaghan, counsel for Mr. E. J. Sweet; Charles A. Elliot, counsel for the defendants Davis.

Cross-examination of Edwin J. Sweet resumed:

X-int. 72. Was the trust of September, 1876, securing the $5,000
123 note intended by you and your cograntor as a first trust upon the property in question?

A. It was intended to be the first trust by being used to settle the old in connection with other notes.

Int. 73. How were the "other notes" to have been secured?

A. Upon this same property, as a second trust.

Int. 74. Did you know at the time of this transaction (September, 1876) who were the then holders of the notes described in the trust of January, 1875?

A. I did not know of my own knowledge, but Charles T. Davis represented to me that the notes were held by him.

Int. 75. Did you at that time demand of him their production and cancellation before you delivered the new note and deed of trust?

A. I did not, but requested him to return the notes to me when the matter was fixed, which he promised to do.

Int. 76. Did you make any inquiry or seek any information whatever whereby you might have verified the statement of Davis in relation to these notes?

124 A. I did not, because I had confidence in his statements.

X-int. 77. Was he acting for you?

A. He was acting as a principal with me as I supposed.

X-int. 78. Do you know the difference in law between principal and agent?

(Objected to by counsel for plaintiffs as incompetent.)

A. I think I do.

X-int. 79. Define it.

(Objected to by counsel for plaintiffs.)

A. A principal is one who is a party to any contract or transaction conducted in his own name and for himself. An agent is a party who acts in a representative capacity.

X-int. 80. Did you know in September, 1876, as much about principal and agent as you know now?

A. I believe I did.

X-int. 81. You had, together with your wife, in January, 1875, executed a deed of trust upon this property intended by its terms to secure the payment of certain promissory notes. Mrs. Sweet and yourself and the holders of those notes were principals in that transaction, were they not?

A. Certainly.

125 X-int. 82. What were Charles T. Davis and William Stickney in connection with that arrangement?

(Objected to by counsel for plaintiff.)

A. They were trustees. Charles T. Davis received the notes.

X-int. 83. Did you know of your own knowledge at the time you executed and delivered the deed of trust and note in favor of Williams that the notes described in the prior trust had been paid?

(Objected to by counsel for plaintiffs.)

A. I did not.

X-int. 84. You have stated that Charles T. Davis and William Stickney were merely trustees. Will you please state what either had to do with the payment of your notes?

A. Well, I don't know what either had to do with it. I desire to qualify my statement; probably I did not understand the question.

(Mr. C. A. Elliot requests that it be noted that counsel for plaintiffs, after the witness had concluded his answer, asked him if he had finished, or had anything more to say, thereby embodying a suggestion to the witness;

Which complainant's counsel deny.

126 The examiner states that he understood the question of counsel for pl'ffs was addressed to himself, to be propounded to the witness.)

WITNESS. I understood your question as to what the trustees had to do to mean what they did in fact do.

X-int. 85. What do you mean by that?

A. You asked me what they had to do with it. I answered, I did not know what they had to do with it, meaning what they did do.

X-int. 86. Did you authorize Charles T. Davis, esq., to take the proceeds of the Williams loan and take up the notes secured by the trust of January, 1875?

(Objected to by counsel for pl'ffs, because there is no evidence from the witness of any proceeds of the Williams note.)

A. I did not authorize him or direct him to do so, but expected him to do so and return the notes to me.

X-int. 87. Your "great expectations," then, were centered upon Davis and not upon Stickney?

A. I looked to Davis directly, but expected Mr. Stickney would properly perform his duty as trustee.

127 X-int. 88. Had you any expressed or implied arrangement with reference to taking up the old notes with any one other than Charles T. Davis.

A. I had not.

X-int. 89. You were as a debtor the principal or one of the principals. What relation did the aforesaid Davis bear to you in the transaction?

A. I regarded him as a principal, believing him to be the holder of the notes.

X-int. 90. I mean in respect of the payment and cancellation of your notes for you?

(Objected to by counsel for pl'ffs, for reasons apparent upon its face.)

A. He bore the relation as trustee with Mr. Stickney so far as devolved the duty of cancelling the notes, but I regarded him as a principal, as the holder of the notes.

X-int. 91. Trustee for whom?

(Objected to by counsel for pl'ffs, because the best evidence is the trust deed itself.)

A. For all parties connected with the trust.

X-int. 92. Now tell us who they were.

128 (Objected to for the same reason.)

A. I don't know who they all were as a matter of fact.

X-int 93. Were the holders of the note parties?

(Objected to for the same reason.)

A. They should be parties.

X-int. 94. With your experience as a dealer in real estate you entertain some doubt, I suppose, as to whether the holder of a note secured by deed of trust is a party thereto or concerned therein?

(Objected to by counsel for plaintiffs.)

A. I have no doubt whatever as to his concern, or as to his right of interest.

X-int. 95. In the duty which you say in effect that Davis assumed, viz: the cancellation and surrender to you of the trust notes of January, 1875, for whom was he to discharge that duty?

A. I understood that in connection with Mr. Stickney he was to discharge that duty for all parties concerned, including the drawers and the holders of the notes.

X-int. 96. And who else?

129 A. That is all I have to say.

X-int. 97. The legal title of this property was vested in Mrs. Sweet, and you, as in duty bound, attended to her business. How did you permit her to convey this property by the trust deed of 1876 without first having extinguished, to your own knowledge, the debt described in the deed of 1875?

A. I relied upon the trustees, as I have before stated, to see that the notes were cancelled before releasing the trust, and particularly upon Mr. Davis as a supposed holder of the notes, to faithfully attend to the matter.

X-int. 98. What did you say to Stickney on the subject at any time prior to the release of the trust of 1875?

(Objected to by counsel for plaintiffs, because the witness has not stated that he has said anything to Stickney.)

A. I had no conversation with him about it at any time prior to the release.

X-int. 99. State precisely why you relied upon Davis in this transaction without consulting Stickney.

130 (Objected to by counsel for the pl'ff because the witness has not stated that he relied wholly upon Davis, which the question seems to imply.)

A. I did not feel that I had any occasion to consult Stickney. Mr. Charles T. Davis, claiming to be the holder of the notes, and being a co-trustee with Stickney, all my conversations about the matter were with him.

X-int. 100. Had you ever detected Davis in a falsehood prior to that time?

(Objected to by counsel for pl'ff as immaterial.)

A. Not to my recollection.

X-int. 101. When do you think he first began to lie?

(Objected to by counsel for pl'ff.)

A. I could not state as to that.

X-int. 102. Approximate as nearly as you can.

(Objected to by counsel for pl'ff.)

A. I don't know that I can answer that.

X-int. 103. Was it in the year 1877, or prior to that?

131 (Objected to by counsel for pl'ff, because the question presumes what the witness has not stated, to wit, that Davis did lie.)

A. I do not charge Davis with having lied. I have stated facts, and prefer others to draw their own conclusions from them.

X-int. 104. When Davis stated to you in September, 1876, or thereabouts that he held the notes secured by the trust of January, 1875, did he tell the truth?

A. I could not swear that he did not of my own knowledge.

X-int. 105. Answer according to the best of your knowledge, information, and belief.

(Objected to by counsel for pl'ffs.)

A. I will say in answer to that question that as a matter of opinion I believe that he did not tell the truth.

X-int. 106. Do you swear from your knowledge and experience as a real estate dealer that it is the duty of a trustee, as such, to receive and cancel notes secured by a trust which has been satisfied without sale of the property?

A. I do, most emphatically.

132 X-int. 107. From whom did you receive the money secured by the trust deed of 1876?

(Objected to by counsel for pl'ff, because the witness has not stated that he did receive any money.)

Question withdrawn.

X-int. 108. Who received the money secured by the trust deed of 1876, the 1st trust deed of 1876, to secure the Williams note?

(Objected to because the witness has not stated that any money was received on the Williams note.)

I do not know who received the money.

X-int. 109. Do you mean to say that you have no knowledge as to the person to whom that money was paid?

(Objected to by counsel for pl'ff, because the witness has not stated, and there is no evidence that any money was in fact paid.)

A. I do.

X-int. 110. After the institution of the suit of Ida S. Davis against yourself, did you call on the complainants or either of them or their counsel with reference to the release of the trust of January, 1875?

133 A. I called upon Mr. Charles T. Davis. I called upon complainants in this suit. I called upon them immediately after the commencement of the Ida S. Davis suit to ascertain if Jackson Bros. & Co. held all of the notes secured by the deed of trust of 1875.

X-int. 111. Did the complainants at that time or at any other time threaten to sue you upon the notes they held, described in the trust referred to?

(Objected to by counsel for plaintiffs.)

A. Mr. Wm. B. Jackson stated to me that he held all parties to the notes responsible for their payment, and that if he could not make it out of the Davis' that he would have to make it out of me.

X-int. 112. When did you first tell the complainants or either of them or their counsel that the notes referred to were described in or covered by a deed of trust?

(Objected to by counsel for pl'ffs, because it presumes a fact that has not been testified to by the witness.)

A. I do not remember ever having any conversation with them to that effect.

134 X-int. 113. Did they or either of them at the time of the interview referred to which time you will please fix as near as you can by date, state that those notes were secured by a trust, or anything to that effect?

A. At the interview in October, immediately after the commencement of the suit by Ida S. Davis, as I before said, I called upon the Jacksons, and in a conversation with them they stated to me that they held all the notes but one secured upon my house on M street; that they had taken the three from A. Davis & Son, and they had not been paid.

(Mr. C. A. Elliot objects to any conversations relative to the defendants Davis unless made in their presence.)

X-int. 114. Have you had any thing to do with the preparation of this case in any shape or form?

A. None whatever. Nothing whatever.

X-int. 115. Can you tell what relation exists between the suit of Jackson et al. vs. Blackwood et al. and the suit of Ida S. Davis vs. E. J. Sweet?

A. I cannot tell.

Adjourned to March 14, 1878, at 12 m.

135 MARCH 14, 1878—12 m.

Met pursuant to adjournment. Present, Edwards & Barnard,

solicitors for the plaintiffs; Charles A. Elliot, solicitors for the defendants Davis; Mr. Callaghan, solicitor for the defendant Sweet; William A. Maury, of counsel for defendant Williams.

Cross-examination of Edwin J. Sweet resumed:

X-int. 116. You say in your answer to the 110th X-question that you called on the complainants immediately after the commencement of the suit of Ida S. Davis against yourself, to ascertain whether they held all the notes secured by the deed of trust of 1875. State what connection, if any, your visit had with the said suit.

A. It had this connection: The private understanding and agreement referred to in my answer to this bill was entered into in view of the fact that the notes secured by the first deed of trust of 1875 had not
136 been returned to me, and one of said notes I knew to be in the hands of Jackson, Bro. & Co. Supposing Davis (C. T.) to be friendly disposed towards me, and that he would carry out his agreement, I had not investigated the matter of the disposition of the notes; but regarding the attachment suit to be an act of treachery on his part, I commenced the investigation of the whole matter.

Int. X 117. State fully what was "the investigation" referred to in your last answer.

A. To ascertain if the Jacksons held the other notes, and also to discover what the Jacksons knew about the matter.

Int. X 118. Why did Davis' "treachery" start you in this investigation?

A. It disclosed his purpose to injure me; and I feared that he had injured me to a greater extent than I was then cognizant of.

Int. X 119. Did you know before you went to the complainants that the other notes, as you call them, had not been paid and cancelled?

A. I did not.

X-int. 120. State the date of your interview with complainants, last referred to.

137 (Objected to by counsel for plaintiffs, because the witness has already answered this very question in answer to X-int. No. 110.)

A. I think it was the very next day after the attachment of my household goods under the suit brought for rent by Ida S. Davis, the wife of Charles T. Davis.

X-int. 121. Did you and your wife, the makers of the four notes secured by the deed of trust of 1875, receive bank notices of the time when the notes matured respectively?

A. I don't remember of receiving a bank notice in any of those cases. I know positively that I did not receive any notice of the 2nd note in the order of their dates.

X-int. 122. Why do you speak so positively as to the second note?

A. Because I received a notice after its maturity from a party who knew of it being in bank.

X-int. 123. Who was the party you refer to?

A. Mr. Howard, a notary.

138 X-int. 124. What sort of a notice did he give you?

A. A verbal notice. I met him on the street, and he asked me about the note; I told him I knew nothing about it. He gave me about the amount of it to refresh my memory.

X-int. 124. Which Mr. Howard was it?

A. The elder Mr. Howard; William E. Howard.

X-int. 125. What did Mr. Howard ask you?

(Objected to by counsel for plaintiff, for the reason that this question has been heretofore answered.)

A. He asked me if I knew that a note of mine had gone over at the Bank of Washington.

X-int. 126. Was that the first time you learned that this note had not been cancelled?

A. It was.

X-int. 127. What did you say to Mr. Howard?

A. I have stated the substance in a former answer.

X-int. 128. In your answer to question 36, that it was in January,
139 1877, that you were told that the complainants held the second note; why did you not then ask them about the other notes?

(Objected to by counsel for plaintiffs, for the reason that the witness has not stated that he was told in January, 1877, that the complainants held one of the notes, as the testimony will disclose.

Counsel for defendant Williams objects to the interference of counsel for plaintiffs, and his suggestions to the witness manifested by the language of his objection.

Counsel for complainants claim the right to object to each and every question which presumes statements which have not actually been made, especially where reference is made in question and answer, or either.)

A. I did not ask them about any of the notes. I did not know complainants at that time.

X-int. 129. Why did you not make an investigation as to the other notes?

A. I Went directly to Mr. Davis to make the inquiry; I went to Charles T. Davis.

140 X-int. 130. What did you learn from Davis?

A. Mr. Davis admitted the fact of the note being out of his hands, but said that he would take care of it. He satisfied my mind that I should have no trouble about it.

X-int. 131. In what way did he satisfy your mind? State particularly.

A. I don't remember the language, but I had confidence in what he stated and believed he would do as he said.

X-int. 132. Give us the substance of what he said.

A. I have already given the substance of what he said in my former testimony. His exact language does not now occur to me.

X-int. 133. You have not told us the means by which he satisfied your mind. State them particularly.

A. I have stated and I now state that he assured me by his word, which I considered good from my relations with him and from the confidence I reposed in him, that he would attend to the matter of the notes, and
141 that I should have no trouble about it. The exact language of the conversation I do not recall.

X-int. 134. Did these assurances quiet your apprehensions as to the 3d & 4th notes, in view of his failure to cancel the second note as he assured you he would do?

A. I don't think I had any apprehensions with reference to the other notes at that time. If I had they were quieted in the same manner.

X-int. 135. I see by reference to the 11th paragraph of the bill of complaint in this cause that mention is made of the lawsuit of Ida S. Davis vs. E. J. Sweet; can you tell us what that suit has to do with this one?

(Objected to by counsel for pl'ffs, because already answered by the witness in his reply to X-int. 115.)

A. It is not for me to say. I don't know what connection the complainants intend to make.

X-int. 136. Why did you postpone the disclosure of this release or the interview with Jackson about the notes until after you were sued by Ida S. Davis?

142 A. I had an interview with Jacksons before the Ida S. Davis suit or I should not have known the Jacksons had anything to do with it.

X-int. 137. But that interview was in January, 1877, as I understood you; why did you postpone further interview until after the interview referred to?

(Objected to by counsel for pl'ffs, because the witness has not stated that he had an interview with the complainants in January, 1877, to which counsel's attention has been repeatedly called by objection, and because the witness has not stated that he did postpone further interview until after the commencement of the suit for rent mentioned in the proceedings.

To which statement Mr. R. K. Elliot, of counsel for defendant Williams, objects, and demand' that before recording the recollection of complainants' counsel respecting the testimony in this case the examiner shall swear him as a witness.)

143 A. My first interview with Jackson was not in January, 1877, and I have not so stated. My first interview with Jackson and my first meeting with him, as near as I can recollect, was about the latter part of April or the first 2 weeks of May, 1877. I postponed further interview with him after consultation with Mr. Charles T. Davis, and upon his assurance that I should not be further troubled in the matter, and for the reason that I had the best of wishes towards Mr. Davis, and the greatest confidence in his ability to do what he promised.

(Mr. R. K. Elliot. "Wishes," "confidence," and "ability," objected to.)

X-int. 138. What occurred between May, 1877, and the institution of the Ida S. Davis suit which affected in any manner your understanding with Davis about these notes?

A. I had two or three other interviews with Mr. Jackson, by which I found that he still held the note—meaning the 2nd note covered by the first trust—and the note had not been paid. The advertisement and sale of the property occurred between the dates mentioned.

144 X-int. 139. State when those interviews occurred, and what the advertisement and sale of the property under the Williams trust had to do with the subject-matter of my preceding question.

A. The next or second interview held with Jackson occurred some weeks after the first, on the sidewalk, near the corner of 7th and the Avenue. The next interview occurred at Jackson Bro's & Co's. store, some time afterwards, but I do not remember the date. I do not know that it had anything to do with the sale of the property under the trust to secure Williams.

X-int. 140. State precisely when you first learned of the release of the trust of January, 1875?

A. I suppose the release was made at the time of the negotiation of the Williams loan. I do not know of my own knowledge that the release was ever executed.

X-int. 141. Answer my preceding question (No. 140) directly.

A. I have never learned of it.

X-int. 142. Have you heard to this day that that trust has been released?

145 A. I have heard it stated.

X-int. 143. When first, and by whom?

A. I don't believe I could state.

X-int. 144. Twelve months ago?

A. Since the commencement of this suit or just prior.

X-int. 145. Had you heard the fact prior to the commencement of the Ida S. Davis suit?

A. I don't know that I heard it discussed or heard anything about it; I felt satisfied in my own mind that the release was made at the proper time, and had no doubt of it.

X-int. 146. What was the proper time?

A. At the time the Williams loan was made.

X-int. 147. Did you tell Mr. Charles A. Elliot, counsel of Charles T. Davis, esq., at or about the time of the commencement of the Ida S. Davis suit that if that suit were pressed you would send the aforesaid C. T. D. to the penitentiary, or words to that effect?

A. I think I did; words nearly to that effect. I think the exact language was that it would result in that. I do not think I said that

146 I would send him to the penitentiary, and yet I might have said so in my anger at that time.

Adjourned to March 15, 1878—1 p. m.

MARCH 15, 1878—1 p. m.

Met pursuant to adjournment.

Present, Messrs. Edwards & Barnard, counsel for the plaintiffs; Mr. R. K. Elliot, of counsel for defendant Williams; Mr. Charles T. Davis and Mr. C. A. Elliot, counsel of defendants Davis.

Cross-examination of Edwin J. Sweet resumed by Mr. R. K. ELLIOT:

X-int. 148. Why were you angry?

A. I was angry on account of the proceedings of Mr. Davis in attaching my furniture for rent when no rent was due.

X-int. 149. Had you paid any rent from the day of the sale, July, 1877, to anybody?

A. Certainly not.

X-int. 150. Why did you not pay rent?

147 A. Because I didn't owe any rent, and no demand was made on me for rent at any time subsequent to the sale, until the commencement of the suit.

X-int. 151. Will you condes'end to tell the parties interested in this case who that property belongs to?

A. I don't know in whom the legal title is vested. I claim an equitable title in it.

X-int. 152. State the grounds of your claim.

A. I claim that the property was purchased for me at the sale under the Williams trust.

X-int. 153. By whom?

A. By Charles T. Davis.

The cross-examination of this witness, so far as the defendant Sam'l T. Williams is concerned, is by his counsel here closed.

148 Cross-examination by Mr. C. A. ELLIOT, counsel for the defendants Davis:

X-int. 154. Who first spoke of a loan of $5,000 on this property in 1876?

A. If you refer to a new loan of an amount sufficient to take up the old notes and give longer time for the payment of the indebtedness upon the property, I think I spoke of it first myself.

X-int. 155. What do you mean by "the indebtedness upon the property?"

A. I mean all of the purchase-money then unpaid and secured by deed of trust upon the property.

X-int. 156. What was that purchase-money represented by?

A. It was represented by a piece of real estate and promissory notes to the amount of about $8,000, secured upon the property on M street.

X-int. 157. Are those notes held by the complainants in this suit?

A. They were held by them a short time ago.

X-int. 158. To whom did you speak of negotiating that loan of $5,000?

149 (Objected to by counsel for pl'ffs, for it assumes a fact not stated by the witness.)

A. I spoke to Charlie T. Davis about effecting a change in the manner stated in a former answer.

X-int. 159. Did you request Mr. Davis to procure that loan for you? I mean the loan of $5,000?

A. No, sir; I did not request him to procure a loan for just that amount, but did request him to make an arrangement which would ease me in the payments on my house.

X-int. 160. What arrangement was he to make?

A. We discussed together the propriety of making new notes so that the payments would be more easy for me to make.

X-int. 161. Was it in pursuance of that discussion or understanding that the Williams loan was made?

A. That was my understanding at the time.

X-int. 162. You then authorized or instructed Mr. Davis to procure that loan for you; did you not?

(Objected to by counsel for pl'ffs, for reasons apparent in the question.)

150 A. I did not instruct him to procure the loan, but authorized by consent the whole transaction, as I understand it to have been performed.

X-int. 163. When was it that you had the understanding with Mr. Davis as to the propriety of a loan?

(Objected to by counsel for pl'ffs, on account of its indefiniteness.)

A. If you mean by your question a loan to myself and wife, or to my wife, to take up the notes then secured upon the property and make the payments easier to us, the conversation occur'ed some time prior to the placing of the Williams trust upon the property.

(Mr. C. A. Elliot, counsel for defendants Davis, objects to all that portion of the witnesses answer as designates the purposes of the loan as not responsive.)

X-int. 164. Please designate the time of the understanding as to the loan which you have designated "the Williams loan," more accurately.

(Objected to by counsel for pl'ffs, for the reason that it assumes a fact that the witness has not stated.)

151 A. If you refer to the conversation held with Mr. Charles T. Davis for the purpose of arranging a new series of notes to take up the old ones, as stated in my former answer, it occurred several weeks prior to the execution of the new note of the Williams trust. I cannot now state more accurately as to the precise period of this arrangement.

X-int. 165. About how many weeks?

A. I can't state; I don't remember.

X-int. 166. Was it not several months before?

A. It might have been.

X-int. 167. Don't you think it was?

A. I could not state more accurately than I have, because I really do not remember the exact period of time.

X-int. 168. Had you not been desirous of negotiating a loan upon this property for some months prior to the execution of the Williams trust?

A. I think I had, from my recollection of it now.

X-int. 169. Do you know Mr. J. Stanley Jones, a real estate broker?

A. I do.

152 X-int. 170. Had you not spoken to him about the negotiation of a loan on this property prior to the time you approached Mr. Davis on that subject?

(Objected to by counsel for pl'ff's, because irrelevant and immaterial.)

A. I may have done so; I don't remember. I remember speaking to Mr. Jones once about a loan upon the property, but don't remember whether it was before or after Mr. Davis and I had talked about the matters before stated.

X-int. 171. When you approached Mr. Davis about procuring this loan did he promise to endeavor to effect it for you?

(Objected to by counsel for pl'ffs, because the question assumes a fact that has not been stated by the witness, there being no evidence that the witness did approach Mr. Davis about procuring a loan.)

(Question withdrawn for the present.)

X-int. 172. Did you approach Mr. Davis for the purpose of his procuring a loan upon this property prior to September, 1876?

153 A. I had conversations with Mr. Davis upon the subject of making new notes to take up the old ones prior to September, 1876, and I think the subject-matter was frequently suggested by myself at such interviews.

X-int. 173. Answer interrogatory 172 precisely, directly, and categorically.

(Objected to by counsel for pl'ffs, because answered by the witness.)

A. I think that answers your question fully. If not, I will further add that I did approach Mr. Charles T. Davis prior to September, 1876, upon the subject of changing the payments secured upon my house; whether you designate it a new loan or a new deal all around, the object would be the same.

X-int. 174. Did you not understand that Mr. Davis was to endeavor to find a man who would loan money on this property; and was it not your intention to authorize him so to do?

(Objected to by counsel for pl'ffs.)

154 A. I did not know how Mr. Davis was to arrange the "new deal" above referred to. He had been requested by me to make a shift for my benefit. The modus operandi of such a shift was entirely immaterial to the witness, provided it was properly done.

X-int. 175. Was anything said by him as to procuring a party who would place a loan on that property for your benefit?

(Objected to by counsel for pl'ffs.)

A. I think in our conversations that Mr. Davis stated that he could not afford to carry the loan much longer himself, and that he would try and get a party to help him out with a portion of it, at least.

(Answer objected to by Mr. C. A. Elliot as irresponsive, and question repeated.)

Mr. EDWARDS. Take your own time and answer in your own way.

(To which suggestion Mr. C. A. Elliot notes an objection.

Mr. Edwards in reply states that he made the statement because of the conversation of counsel now cross-examining the witness.)

X-int. 176. Question 175 repeated.

155 A. There was, for my benefit, to the effect of making the note easier to pay; and I also refer to my former answers to this question.

X-int. 177. Do you know anything about Mr. Davis endeavoring to procure a loan in this connection from a Philadelphia party?

A. I do not. I have no recollection of it.

X-int. 178. When did you call with Mr. Charles T. Davis upon the defendant Williams?

(Objected to because the witness has already answered a similar question, being Int. 29.)

A. During the pendency of the advertisement for the sale of the property secured by the Williams trust. I mean the sale of July 17, 1877.

X-int. 179. For what purpose did you go, and did not Charles T. Davis accompany you at your request?

A. I visited the summer residence of Mr. Williams, near Bladensburg, Md., accompanied by Charles T. Davis, for the purpose of inducing the said Williams to postpone or withdraw the sale of this property. Mr. Davis went by my request and by his own voluntary offer to do so. We

156 asked Mr. Williams to postpone or withdraw the sale upon the expectation of being able to settle the matter to his satisfaction. Mr. Williams stated, in answer to a suggestion of Mr. Davis, that he had been satisfied with the manner in which Mr. Davis had transacted his business; that he would like to accommodate him and accommodate me also, but desired prompt settlement in all his matters.

(Counsel for defendants Davis objects to all conversation that took place on that occasion, because irresponsive.)

X-int. 180. Had you requested Mr. Davis to accompany you there prior to his voluntary "offer"?

A. I don't remember whether he offered voluntarily before being requested, but do know that he was perfectly willing to accompany me, and so stated.

X-int. 181. It is not likely that he would have offered to visit a gentleman in your interest unsolicited, is it?

A. It is a reasonable supposition in this case.

X-int. 182. Did he ever do so before?

(Objected to by counsel for pl'ffs, because entirely irrelevant and immaterial.)

157 A. Did he ever do what before?

X-int. 183. Did he ever before volunteer to accompany you to visit a gentleman in your interest without invitation?

(Same objection.)

A. He had.

X-int. 184. When, where, and to visit whom?

(Same objection.)

A. I accompanied him to visit Mr. R. K. Elliot, one of the trustees under the Williams trust, at his (Davis') solicitation.

X-int. 185. Why did he ask you to go there?

(Same objection.)

A. Because I had requested him as one of the trustees to postpone the sale. He asked me to accompany him to talk with Mr. Elliot about it, stating that Mr. Elliot held the deed of trust and had been directed by Mr. Williams to advertise and sell the property. This occurred prior to advertising the property. I think there were other times when Mr. Davis volunteered to accompany me to see parties in my interest, but I do

158 not now recall them.

X-int. 186. Had you requested Mr. Davis to postpone the sale prior to the time you and he went to Mr. Williams?

A. I had.

X-int. 187. And it was in pursuance of that request that he volunte'red to accompany you on that visit, was it not?

(Objected to because already answered.)

A. I believe it was.

X-int. 188. What were the peculia' features of this case that you think might have induced him to go?

(Objected to because the witness has not stated there were any "peculiar features" referred to in the question.)

A. I have not stated that there was anything peculiar that induced him to go.

X-int. 189. Is that answer made in that form of your own volition or because of the reason stated by counsel for plaintiffs of his objection?

A. I wish it distinctly understood right here that I am answering questions in accordance with the facts as I understood them, and not in

159 the interest of the plaintiffs or plaintiffs' counsel, defendants or defendants' counsel. I wish to correct that and say "in the interest or at the suggestion."

X-int. 190. You have answered that "it is a reasonable supposition in this case," that it is likely that Mr. Davis would have visited a gentleman unsolicited. Give the reason for it.

(Objected to as irrelevant.)

A. Oh, in the kindness of his heart & his amiable disposition of character.

X-int. 191. Why should those qualities have been manifested?

(Same objection.)

A. Oh, as the result of early piety and good associations, I suppose.

X-int. 192. Who held the notes secured by the deed of trust of January, 1875, at the time of the execution of the Williams and the other trust of same date.

(Objected to by counsel for pl'ffs because already answered.)

A. I don't know.

X-int. 193. Did you know at that time?

A. I did not, but I thought I did.

X-int. 194. Why did you think so?

160 (Objected to because witness has already answered this same question.)

A. I thought they were held by Mr. Chas. T. Davis, because I had never heard of their negotiation or transfer to other hands at that time.

X-int. 195. Is that the only reason?

(Objected to because the questions just put have already been answered by the witness, and these same questions are but a repetition of x-examination by the solicitors for the defendant Williams.)

A. I think Mr. Davis told me that he held them.

X-int. 196. What did he (Davis) say?

(Same objection.)

A. He said he held them; I have answered that before.

X-int. 197. Do you quote his language?

A. I could not quote the language, but, to the best of my recollection, he told me he had them in his safe.

X-int. 198. Are you positive in your recollection?

161 A. I have stated to the best of my recollection; I cannot state more positively.

X-int. 199. When did he make that statement?

(Objected to because already answered.)

A. At about the time the negotiation of the matter of September, 1876, as near as I can recollect, and before. My understanding all the time was that he held the notes.

(Mr. C. A. Elliot objects to the witness' understanding.)

X-int. 200. How long before?

A. From the very day of the first transaction—that of January, 1875, and during the whole period intervening.

X-int. 201. On how many different occasions within that period did he make that statement, either that he held the notes or that the notes were in his safe?

A. Oh, I don't remember how many times he stated it.

X-int. 202. Do you remember one single occasion?

A. Not particularly.

162 X-int. 203. Do you mean to say that any such statement was made by Mr. Davis about the time this property was released and the Williams loan negotiated?

(Objected to because this question assumes facts stated by the witness which he has not made.)

A. That is my recollection of it.

X-int. 204. Designate the time?

(Objected to because the witness has repeatedly answered the gentleman by stating his best recollection.)

A. I can't designate the hour, or the day, or the day of the week, or the day of the month, or whether sun shone or it was cloudy. I simply recollect that such an assurance was made at about the time of the negotiation of the Williams trust.

X-int. 205. Can you give the month or the year?

A. I could not with definiteness. I can guess at it.

X-int. 206. Do you recollect the place?

A. It was during interviews held with Mr. Davis at about that time,
163 but I cannot state at what place. I was meeting Mr. Davis daily at home and on the street, and it would be impossible for me to testify as to the precise dates.

X-int. 207. Had you other business with Mr. Davis about that period?

A. I don't remember; I think I had, however.

X-int. 208. Have you not stated in your testimony in this case that you had many business transactions with Mr. Davis for about the past 5 years.

A. I think not. I think I stated for about four years I had had more or less business with Mr. Davis.

X-int. 209. You then had business transactions with Mr. Davis in the year 1876, did you not?

A. I had.

X-int. 210. Can you state the subject-matter of any transaction, other than the one involved in this case, with Mr. Davis during that year?

(Objected to as immaterial and irrelevant.)

A. I could not undertake to state without reference to my books and
164 memorandum the precise nature of my business transactions with Mr. Charles T. Davis during the year 1876, but my recollection is that they were of a general character, but particularly of auction sales of the latter, of which there were several.

X-int. 211. Have you any definite recollection on the subject last inquired about?

(Same objection.)

A. I have already answered that question plainly and squarely.

X-int. 212. Will you answer it "yes" or "no"?

(Same objection.)

A. Yes.

X-int. 213. Please answer.

(Same objection.)

A. Yes.

X-int. 214. Give us your definite recollection about it.

(Same objection.)

A. I have stated my recollection of it in a prior answer fully, so far as I am able to state upon the light now given me.

X-int. 215. Have you any memorandum that shows any conver-
165 sation between yourself and Charles T. Davis as to who was the holder of the notes secured by the trust of January, 1875; I mean prior to the execution of the Williams trust?

A. I have not. I am not in the habit of recording conversations, either of business matters or other things.

Adjourned to March 16, 1878, 1 p. m.

MARCH 16, 1878—1 p. m.

Met pursuant to adjournment.

Present, Edwards & Barnard, counsel for plaintiffs; Mr. C. A. Elliot, counsel for defendants Davis—the defendant Charles T. Davis; Mr. Callaghan, counsel for defendants Sweet.

Cross-examination of Edwin J. Sweet by Mr. C. A. Elliot resumed:

X-int. 216. Was it not understood between yourself and Davis
166 at the time of this transaction of September, 1876, that you would look after and pay, or have paid, the notes held by the complainants?

A. Certainly not.

X-int. 217. Did you not promise so to do?

(Objected to by counsel for pl'ffs.)

A. I made no such promise; neither was the matter suggested or discussed by Mr. Davis or myself.

X-int. 218. Had you seen the first of those notes after maturity?

A. Prior to October last; I don't remember seeing any of the notes after they left my hands.

X-int 219. Did you not call at the Bank of Washington and ask for and see that note? I mean the first note of the four.

A. I did not.

X-int. 220. Do you swear positively to that fact?

A. I swear most positively and emphatically.

X-int. 221. Might you not possibly be mistaken?
167 (Objected to by counsel for pl'ffs.)

A. I could not possibly be mistaken, for if I had seen the note I should have seen the manner of the endorsers upon it, and should certainly have remembered it.

X-int. 222. Did not Mr. Charles T. Davis or Augustus Davis pay that note?

A. I don't know of my own knowledge.

X-int. 223. Have you seen the note in the possession of either of those gentlemen?

A. Not to my recollection.

X-int. 224. Have you ever seen that note since it matured?

A. Not to my recollection.

X-int. 225. Did not Mr. Charles T. Davis show you that note, and did you not know at that time that that note had been held by the complainants, and that they also held the other three.

A. Mr. Davis did not show me the note at that time, and I did not know the complainants, nor did I know that they then held or had ever held any of these notes of January, 1875.

X-int. 226. Where did you first learn that fact?

(Objected to because so often asked and so often answered.)

168 A. I first learned the fact, if it was a fact, that Messers. Jackson, the complainants, held the second note the latter part of April or the first two weeks of May, 1877.

X-int. 227. Did you call on Mr. Jackson at that time?

(Objected to because already answered.)

A. I did not.

X-int. 228. Did you call on the Messers. Jackson in May, or about May, 1877, with Mr. Charles T. Davis, and have an interview with them relative to some property on Q street?

(Objected to as immaterial.)

A. I called upon the Jacksons with Charles T. Davis with reference to the subject mentioned the latter part of May or June, I think.

X-int. 229. Was the subject of your notes of January, 1875, then referred to?

A. They were not alluded to at all.

X-int. 230. Did the Mr. Jackson whom you saw say anything about notes discounted by the firm for Mr. Davis, or which came into their hands through him?

169 (Objected to as immaterial and irrelevant.)

A. They did.

X-int. 231. Did he not say that he or the firm knew nothing about how those notes were secured, and that they depended upon Charles T. Davis in those transactions?

(Objected to because of its indefiniteness. Counsel does not describe what notes he is speaking of.)

A. I did not hear him say so. He did say to me, in Mr. Davis' presence, that he had not authorized the sale of the Q street property; that he had obtained from Mr. Davis about $25,000 worth of real estate notes, and that he considered they were all good, and he thought the loan on the Q street houses was a good one, and that the property would bring the money at the sale.

(All after the first sentence in the answer objected to by Mr. C. A. Elliot as irresponsive.)

X-int. 232. Did he not say that he looked to Mr. Davis personally for the payment of the notes held by the firm?

170 (Objected to by counsel for pl'ffs.)

A. I have no recollection of any such statement.

X-int. 233. When did the complainants, if you know, first hear of the release of this property from the trust of January, 1875?

A. I don't know of my own knowledge when they first heard of it.

X-int. 234. Did they know it when you had an interview with them, after the institution of the suit of Mrs. Ida S. Davis?

(Objected to because the witness has already stated that he did not know of his own knowledge when the complainants heard of the release.)

A. I don't know whether they knew it or not. The object of my interview with them at that time was to ascertain if they held the other two notes, meaning the last two notes of that trust, for my own information, and not to communicate to them other facts.

X-int. 235. Did you inform them, or their solicitors in this suit, of that release?

171 A. I stated to Mr. W. B. Jackson that I did not owe the notes held by him or his firm, and that new notes had been substituted for them, secured upon the same property, for the payment of which myself

or wife were held responsible. I do not remember that the word "release" was mentioned. I did not know who the solicitors of Messers. Jackson Bros. & Co. were at that time. I may have mentioned to Mr. Edwards that these notes had been released without having been, paid, in friendly or social interviews with him, referring to the Ida S. Davis suit for rent, but not in the capacity of solicitor for anybody.

X-int. 236. Was not that information given after the institution of the lawsuit, and prior to the institution of this suit?

(Objected to because the witness has not stated that he did give any information in fact, and immaterial.)

A. Information to whom?

X-int. 237. I mean to the firm of Jackson Bros. & Co., or any
172 member thereof, or to Messers. Edwards & Barnard, or either of them.

A. The information was given by me to Jackson Bros. & Co., as I have before stated, the next day after the attachment of my furniture was made. I do not remember when I mentioned to Mr. Edwards, or to any member of the firm of Edwards & Barnard, the facts about the possession of the notes by the Jacksons—whether it was just before or just after the commencement of this suit.

X-int. 238. How about the release?

A. I referred in my former answer to the whole business.

X-int. 239. Had the complainants threatened suit against yourself, or yourself and your wife, on the notes of January, 1875, prior to the institution of the suit of Ida S. Davis?

(Objected to because the question has been put to the witness, as per X-int. 111, and by him answered.)

A. The Jacksons did threaten suit against all parties to the notes, but expected to make it out of the Davises, just after the Ida S. Davis
173 suit, but I do not remember of any threat being made to that effect prior.

X-int. 240. Did you not inform me (C. A. Elliot), as the attorney of Mrs. Davis, at the time the suit was instituted against you, that the complainants held your notes, or the notes of yourself and wife, of January, 1875, and had been threatening suit thereon?

A. I did.

X-int. 241. Did you not further inform me that those notes had been released; that Jackson Bro's. did not know that fact, and that if the suit of Mrs. Davis were prosecuted you would inform them of the fact of that release?

(Objected to because immaterial and irrelevant.)

A. I did state to Mr. Elliot, in substance, what he has stated, but not all at the same time. My recollection is that I saw Mr. Elliot after the commencement of the Ida S. Davis suit, before I saw Mr. Jackson, when I made to Mr. Elliot the threat mentioned by him; and after I had seen the Jacksons and had been threatened, as stated, I then mentioned
174 to Mr. Elliot that fact. I saw Mr. Elliot and talked with him upon this subject a number of times, my threat not seeming to have the desired effect upon the learned counsel for Mrs. Davis.

X-int. 242. Did you not have an interview with me (C. A. Elliot) immediately after, or the very day that your goods and chattels were attached,

and was it not at that interview that you gave me the information as to the release, as to the fact that Jackson Bro's. held the notes, their threats of suit, and your threats of exposure?

(Objected to by counsel for pl'ffs as immaterial and irrelevant, and counsel for defendants (Sweet) instructs the witness not to answer except by an order of the court, as to the form of the question, "your goods and chattels," for that the witness is the defendant in a certain replevin suit now pending in the supreme court of the District of Columbia, to which he has confessed the title of the property so replevined in an affidavit filed in the Ida S. Davis suit, in which said suit witnesses solici-
175 tor, now present, is also the attorney of record to certain trustees. Question withdrawn.)

X-int. 243. Did you not give me all the information set out in X-interrogatory 241, in our first interview, which occur'ed on the very day that the goods and chattels in your house, excepting the piano, were attached; or when you called to see me relative to releasing the piano and chairs?

A. I swear positively, upon refreshing my memory upon that subject by meditation, that I did not see Mr. Elliot, counsel for Mr. Davis, on the day that the attachment was made; and when I did see Mr. Elliot the goods had been attached. My first interview with him occur'ed on the morning of the following day, nearly in front of his office, before I had seen the Jacksons. I do not remember the exact language used by myself in referring to the matter of the release of the unpaid notes, but I could not have truthfully stated that the Jacksons had threatened suit upon the three notes, because I did not know at that time that they held
176 more than one of the notes. I do remember, in subsequent interviews with Mr. Elliot upon this subject, and of which there were many, of stating to him all the facts that he has mentioned.

X-int. 244. How long had Jackson Bros. been threatening suit, if they did threaten suit, on the note you knew they held prior to our first interview?

(Objected to as immaterial.)

A. I don't remember, in my interviews with the Jacksons prior to the commencement of the Ida S. Davis suit, of having been threatened with a suit, but I was made to understand that the note, referring to the 2nd note, would have to be paid; particularly do I remember of such a suggestion by William B. Jackson in the second interview held with him.

X-int. 245. Did the complainants, or either of them, or any attorney for them, ever write to you on this subject?

(Same objection.)

A. I think the complainant Wm. B. Jackson did write to me
177 just prior to the Davis suit.

X-int. 246. Will you produce the letter, if you have it?

A. I will.

X-int. 247. What was the comparative depreciation of real estate in the city of Washington from January, 1875, to July, 1877?

(Objected to because witness has not stated, and there is no evidence in the case that there has been any depreciation since the period first mentioned.)

A. It is estimated by experienced dealers and real estate agents to have

depreciated, between the dates mentioned, about one-third in value, and I based the appraisement given in my former answer upon that basis.

X-int. 248. The sales of what property do you refer to in that locality that enables you to estimate the value of this property?

A. The sales of two houses in the same block. A house owned by Moses Kelly, just opposite, valued about $25,000, was sold for $16,500. A house purchased by Mr. Howard (the grocer on the
178 corner of L and 7th) on the opposite side of the street from my residence, near the corner of 5th, sold, at about July, 1877, for $4,000; the house had been in my hands for sale at about the time that my residence was purchased, and was considered then to be worth $6,000.

X-int. 249. Do you know, of your own knowledge, or from information derived from the complainants, how this suit came to be instituted?

(Objected to by counsel for pl'ffs as immaterial.)

A. It came to be instituted, as I understood, by complainants, because it was considered by them to be their only remedy to protect their interests.

X-int. 250. Was it instituted of their own volition?

(Objected to by counsel for pl'ffs.)

A. I don't know.

X-int. 251. Did not Wm. B. Jackson inform you that the institution of this suit had been suggested to them?

(Objected to by counsel for pl'ffs.)

A. He did.

179 X-int. 252. Will you please give us the whole history of this suit so far as given you by Wm. B. Jackson, as to its institution?

(Objected to by counsel for pl'ffs.)

A. After the commencement of this suit I had a number of interviews with Wm. B. Jackson for the purpose of entering into a compromise by which I might extricate myself from the unfortunate dilemma in which I had been placed by reason of no fault of my own, but by the fraud of others. A plan was suggested satisfactory to myself and agreed upon by Charles T. Davis, which the Jacksons desired to submit to their attorneys, but which Mr. Davis failed to comply with, and I understood also that the attorneys for the said Jacksons did not recommend. The Jacksons then declined to compromise the matter in any other way than by the payment of the notes, or good security other than the M street property.

(Answer objected to by Mr. C. A. Elliot as irresponsive.)

180 X-int. 253. Did not Mr. Jackson inform you that he was approached by counsel and the institution of this suit requested; and, if so, by whom?

(Objected to by counsel for pl'ffs, because irrelevant, impertinent, and a gratuitous insinuation without any foundation whatever for it.)

A. When I asked Mr. Wm. B. Jackson who were his counsel he informed me that he had employed Mr. R. T. Morsell to examine the titles to the various properties held as security for notes received from the Davis', and that he had consulted other counsel as to the best course to pursue to establish his rights; that he met Mr. Edwards on the steps of his office and Mr. Edwards had informed him upon the statement of the facts in the case that he thought he could make the money for him; that he employed Edwards & Barnard to prosecute the case upon Mr. Edwards' suggestion that it was his best course to pursue.

Counsel for defendants (Davis) here closes his cross-examination of this witness.

181 Cross-examination by Mr. CALLGHAN, counsel for defendants Sweet:

X-int. 254. (X-int. No. 58 and the answer read to the witness and he is asked:) "What were the other 'notes referred' to in your answer?"

A. The "other notes" referred to in my answer were 6 notes for $530.26 each—the amount required in addition to the $5,000 note to take up the first notes given for deferred payments. The trust to secure these notes was executed Sept. 27, 1876, and together with the note was placed in the hands of Charles T. Davis.

Adjourned to March 19, 1878, 1 p. m.

182 MARCH, 19, 1878.—1 p. m.

Met pursuant to adjournment; present, Edwards & Barnard, counsel for the plaintiffs; Mr. Chas. A. Elliot, counsel for defendants Davis; Mr. Callaghan, counsel for defendants Sweet.

Cross-examination of Edwin J. Sweet resumed by Mr. CALLAGHAN:

(Counsel for defendants Davis objects to the cross-examination of this witness by his solicitor of record.)

X-int. 255. What part, if any, of the proceeds of the Williams note passed through your hands?

(Objected to by Mr. C. A. Elliot as immaterial.)

A. Not one cent of the proceeds of the Williams note was received by me or passed through my hands.

X-int. 256. Did you, or any one for you or for your wife, to your knowledge, receive any check or draft, or any order for money payable to your or your wife's order, growing out of said transaction?

183 (Objected to by counsel for defendants Davis.)

A. No.

X-int. 257. Did you or your wife, to your knowledge, endorse any check or draft or other order for money growing out of said transaction?

(Objected to by same counsel.)

A. No.

X-int. 258. (X-int. 71 and answer is read to witness and he is asked:) To what extent did you do the duty of a grantor in deed of trust of January, 1875?

(Objected to by same counsel.)

A. I signed the deed of trust and the notes secured thereby, together with my wife, and gave the notes to Charles T. Davis, with whom the bargain was made for the purchase of the property.

X-int. 259. What did you do as grantor as to the payment of the semi-annual interest stipulated in said trust to be paid by you as it fell due?

A. I paid the interest to Charles T. Davis, with the understanding that he was the holder of the notes.

184 X-int. 260. Is the interest on said notes still paid, to your knowledge?

A. I don't know whether it is paid or not.

X-int. 261. Have you ceased to pay said interest?

A. Certainly.

X-int. 262. When did you cease to pay said interest?

A. I ceased to pay the interest when the new loan was made, meaning the Williams loan.

X-int. 263. Why did you cease to pay said interest?

A. Because the notes were supposed to be cancelled and new notes given in their place, upon which interest had commenced to accrue at that date.

X-int. 264. Did you say to the defendant Charles T. Davis, at the time the $5,000 loan was negotiated, that the notes secured by the trust of January, 1875, had been settled?

(Objected to by counsel for defendants Davis.)

A. No, sir.

X-int. 265. Do you know as a matter of fact whether or not the defendant Williams paid any consideration for said $5,000 note?

185 A. I don't know anything about it.

The cross-examination of this witness is here closed by Mr. Callaghan, counsel for defendants Sweet.

Redirect examination by counsel for plaintiffs:

Int. 266. Did you ever see the deed of release from the trustees Charles T. Davis and Williams Stickney, described in the bill as Complain'ts' Exhibit No. 3.

A. I have never seen it.

Int. 267. Do you know who prepared or drafted it?

A. I do not.

Int. 268. Do you know where it is?

A. I do not.

Int. 269. At the time of the execution and delivery of the notes and trusts of Sept., 1876, did not your family and that of Augustus Davis occupy adjoining houses?

186 (Objected to by counsel for defendants Davis.)

A. They did.

Int. 270. Was not the defendant Charles T. Davis living with his father at that time?

(Ojected to by same counsel.)

A. He was.

Int. 271. Were not the social relations of your family and that of the def't Augustus Davis of a very friendly and intimate character?

(Objected to by same counsel.)

A. They were.

Int. 272. Had you prior to the execution and delivery of the notes and trusts of Sept., 1876, in your business transaction with the defendant Charles T. Davis, discovered anything to the injury of his integrity or fair dealing?

A. I had not.

Int. 273. You have testified that prior to the sale of this property of July last, you called upon or visited the defendants Williams and Elliott for the purpose of procuring a postponement of the sale. Did you

187 not thereafter make arrangements, in respect of the sale, with the defendant Charles T. Davis satisfactory to you, and which avoided any further opposition on your part?

(Objected to by counsel for def'ts Davis.)

A. I did.

Int. 274. What consideration, if any, was there for the execution and delivery of the two trust deeds of September, 1876, and the notes therein mentioned, other than the cancellation of the notes of January, 1875?

A. There was no other consideration.

Int. 275. Did you take any part in the preparation of this suit or furnish any information to complainants' counsel in relation thereto?

A. Not any whatever.

Int. 276. Did you know prior to the service of the subpœna on you that you were going to be called as a witness for the complainants in this cause?

A. I did not.

Int. 277. When the notes and deeds of trust of Sept., 1876, were executed to take up the notes of January, 1875, as you have stated,
188 did you employ any one to examine the title of the property?

A. I did not.

Int. 278. Did you furnish an abstract or certificate of title of the property?

A. I did not.

Int. 279. Do you know, of your own knowledge, that such abstract or certificate of title was given at or about the time of the execution of the notes and trusts of September, 1876?

A. I do not.

Re-cross examination by Mr. C. A. ELLIOT, counsel for defendants Davis:

X-int. 280. Had you paid the interest on the notes of January, 1875, in full to the time of the new loan?

A. I think not; I think there was a little balance of interest due then.

X-int. 281. What was the date of the last payment by you of interest on those notes?

A. I could not say without referring to my books.

X-int 282. At the time of the maturity of the first of those notes
189 were you not in arrears for the interest also?

A. I think not; I paid the interest when demanded by Mr. Davis.

X-int. 283. Did you pay the interest to the maturity of that note?

A. I think I did at its maturity.

X-int. 284. To whom did you pay it, and how was it paid?

A. To Charles T. Davis, by check on the German American Savings Bank, I think.

X-int. 285. Have you got that check?

A. I have if I paid it by check, and I think I did.

(Mr. C. A. Elliot requests witness to produce that check, if he has it.)

X-int. 286. Were you not largely indebted to Charles T. Davis in September, 1876—to him personally—other than on account of three of the notes of January, 1875?

(Objected to by counsel for pl'ffs as not responsive to anything brought out on redirect examination.)

A. I did not owe Charles T. Davis one penny in September, 1876, except upon notes secured by deed of trust given him as part pur-
190 chase-money for houses; and with the exception of the notes

mentioned in the question, such notes were promptly paid as they became due.

X-int. 287. Do you know of such payment of your own personal knowledge?

(Same objection.)

A. I do, for I paid the notes myself, by checks, which I now have in my possession, and will produce them if required.

X-int. 288. Have you had interviews or an interview with complainants' solicitors, or either of them, prior to your having been sworn as a witness, as to what you would testify to in this cause?

A. No, sir.

X-int. 289. Did you have any interview at all with them, or either of them, on the day you first came here as a witness, and while your wife was being examined?

(Objected to by counsel for pl'ffs, because the question does not purport an interview in respect of this case, and therefore immaterial.)

191 A. I think, on that occasion, Mr. Edwards propounded one or two questions to ascertain what my wife knew about the matter; to which I replied that I did not think she knew anything about it. That is all.

X-int. 290. He did not ask you, then, any question about what you knew?

A. He may have done so, but if he did I do not now remember what question or questions, if any, he propounded.

X-int. 291. Have you been under advice or instructions by anybody during the period of your examination in this case?

(Objected to by counsel for pl'ffs because of its indeffiniteness.)

A. I have not been advised or instructed directly or indirectly by any person whomsoever as to my testimony in this case, not even by my own counsel.

X-int. 292. In x-int. 285 I asked, substantially, whether the complainants or any attorney wrote to you on the subject of the non-pay-

192 ment of the second note of January, 1875, and you thought that Wm. B. Jackson had written to you about it, and tendered yourself willing to produce that letter; have you done so?

A. It has slipped my mind, but I will attend to it in time for the next session, if I can find it.

Adjourned to March 21, 1878, 1 p. m.

MARCH 29, 1878.

Examination EDWIN J. SWEET resumed by C. A. ELLIOT:

X-int. 293. Have you found the letter that you have stated was written to you by Wm. B. Jackson, as you thought?

A. I have not. I have looked for it, but could not find it.

X-int. 294. Have you the check referred to in answer to x-int. 284, which I heretofore requested you to produce?

A. I have, and I produce it.

(The check is filed and marked Exhibit J. N. O. No. 6.)

193 X-int. 295. Was that the interest on the first note to its maturity?

A. It was the interest then due upon all the notes secured by the trust of January, 1875.

X-int. 296. For how long a period?

A. For a period of 6 months.

X-int. 297. To what date?

A. To January 1, 1876.

X-int. 298. Did you pay it on January 1, 1876?

A. I did not. I paid it on January 4, 1876.

X-int. 299. Have you got the check-book of your account with that bank during January, 1876?

A. I have all that remains of it—the stubs.

X-int. 300. Do those stubs show for what purpose or payment the checks were drawn?

A. They do, generally.

X-int. 301. Will you produce that?

A. Certainly.

X-int. 302. When were the words "Jan. 4, 1876," written on this check?

A. The words, "Jan. 4, 1876," were written on this check when the check was drawn, to wit, January 4, 1876.

X-int. 303. Is all that check in your handwriting?

194 A. It is not. The words "Jan 4, '76," "Charles T. Davis," "order," "three hundred and forty," "$340," and "E. J. Sweet," are in my own handwriting. The other portion of the face of the check are printed, with the exception of the number of the check, "799," which is in the handwriting of my clerk.

X-int. 304. Was all the writing on the face of that check done at the same time?

A. All except the number of the check.

X-int. 305. Will you explain how Jan. 4, '76, is written in different ink, and apparently with a different pen?

(Objected to by pl'ffs' counsel, because the witness has not stated what the question assumes.)

A. I cannot explain what instruments of writing were used in preparing this check. It was intended to secure to Charles T. Davis $340 in money, and there is evidence in the shape of a stamp of The German American Savings Bank, that the money was paid.

X-int. 306. Was that money paid for interest alone?

195 A. I cannot state positively whether or not the $20—over and above the amount of interest which appeared to be due at that time—was paid on account of the notes and interest, but I believe that the said amount of $20 was paid to Mr. Chas. T. Davis as a bonus and consideration for extending the time on the note due January 1, 1876. I have consulted with Mr. Chas. T. Davis upon the subject, and he states that he does not remember about it.

X-int. 307. Was $20 all the bonus that was paid Mr. Davis?

(Counsel for defendants Davis requests the examiner not to allow the witness to refer to any paper before answering unless he has stated what that paper is.)

WITNESS. At what time?

Mr. ELLIOT. You know well enough at what time, and please answer the question. I mean embraced in this check.

A. It was.

X-int. 308. Do I understand you to state that the interest on
196 the notes that you have stated, and $20 bonus, was all that was embraced in this check?

A. Three hundred and forty dollars was all the money paid Mr. Davis by check by me at that date, three hundred and twenty dollars of which was for the amount of interest due upon the notes secured by the trust of January, 1875, and the balance—$20, I believe, but cannot swear positively—was paid for the purpose before indicated. I think other amounts were credited to me for the same purpose, but am not positive.

X-int. 309. Explain the last sentence.

A. I refer, by "other amounts," to matters that may have been due me for services as auctioneer and for advertising sales in which C. T. Davis was interested.

Redirect by Mr. EDWARDS:

Int. 310. Since you were first called to testify in this case have you requested the defendant Charles T. Davis to allow you to examine
197 the book kept by him containing your account with him? If yea, state with what result.

(Objected to by Mr. C. A. Elliot.)

A. I called upon Mr. Davis yesterday to compare notes for the purpose of refreshing my memory about the various transactions between us of January, 1876, and asked him to consult his books of that date for the purpose. He stated that he had not his books at his office, but would look at them and see me at 1 o'clock yesterday. I called, as directed, at that hour, but Mr. Davis did not keep his appointment. I called again this morning at his office, and he stated to me that he had not been able to look at his books, and could not get at them at that time, or words to that effect.

Adjourned to March 30, 1878, 1 o'clock p. m.

198 Counsel for defendants Davis states that he will be out of town to-morrow, at Rockville, Md., and cannot go on till next week, and asks that the meeting be adjourned to one day next week.

Counsel for pl'ffs object to an adjournment to a further time, and the meeting is adjourned accordingly.

MARCH 30, 1878—1 p. m.

Met pursuant to adjournment. Present, counsel for plaintiffs, and Mr. Chas. A. Elliot, counsel for def'ts Davis; Mr. Callaghan, counsel for defendants, Sweet.

Cross-examination of EDWIN J. SWEET resumed by C. A. ELLIOT, Esq.:

199 X-int. 311. Have you brought the stub of check No. 799? If so, please state whether all the writing on that stub was made at the time the check was drawn.

A. I have brought the stub with me, which reads No. 799, Jan. 4, 1876. C. T. Davis' int. M st. house, &c., $340.00. I am unable to state positively whether or not the memorandum, "Int. M st. house, &c.," was made at the time the check was written. I am in the habit of making memorandums on my stubs, showing the purpose for which the checks are

drawn, after the drawing of checks, whenever I have discovered I have omitted to do so at the time I drew the checks. I find memorandums in lead pencil on other checks drawn on same day, to show for what purpose they were drawn.

EDWIN J. SWEET.

Sworn to and subscribed before me this 30th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

200 MARCH 21, 1878—1 p. m.

Met pursuant to adjournment.

Present, Messers. Edwards & Barnard, counsel for pl'ffs; Mr. Callaghan, counsel for defendants Sweet; Chas. A. Elliot, counsel for defendants Davis.

JOHN F. COOK, being duly sworn, deposed as follows:

I am collector of taxes for the District of Columbia.

Int. 1. Have you the book containing a list of real property situate in Washington City, in this District, sold by you, in your capacity as collector of taxes of this District, on the 14th of June, 1876?

A. I have.

Int. 2. Please examine that book, and state whether sub-lot 49, in square 513, and improvements thereon, was sold for taxes on that day; and, if so, state the amount it sold for.

A. It was so *so* sold, and the amount it sold for was $111.23.

Int. 3. For what year's taxes was it sold?

201 A. For the amount of taxes due for the year ending June 30, 1876, including penalty accrued to date of sale and expenses attending said sale.

Int. 4. Have you the book containing the original entries of moneys received for general taxes on real estate in this city on the 3rd day of October, 1876?

A. I have.

Int. 5. Is there any entry in this book under the last mentioned date of money paid to you as such collector for taxes on said sub-lot 49 in square 513? If so, state the amount paid and for what tax it includes.

A. There is such an entry. The aggregate amount is $114.60. The items making this amount are the tax proper, $99.66; advertisement (cost) 60 cts.; penalty & interest to date of payment $14.34. It includes the tax for the year ending June 30, 1876. This was the redemption amount of the property so sold as stated above.

Counsel for defendants Davis requests the solicitors of the com-

202 plainants to state for what purpose this testimony is introduced.

Counsel for pl'ffs reply that the testimony is introduced to prove that this property was sold, as stated, and that thereafter it was redeemed from the sale by the payment of October 3, 1876 of the tax, costs, and penalty.

Counsel for defendants Davis here interposes an objection to all the testimony of this witness as irrelevant and immaterial.)

No cross-examination.

JOHN F. COOK.

Subscribed and sworn to before me this 21st day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

203 CHARLES A. JAMES, being duly sworn, deposed as follows:

I am a resident of this city, and cashier of the Bank of Washington, in this city.

Int. 1. Did the firm of Jackson Bro. & Co., doing business in this city, keep an account with the Bank of Washington in this city during the months of December, 1875, and January, 1876?

(Objected to by the counsel of defendants Davis as immaterial.)

A. Yes.

Int. 2. Have you with you the book kept by said bank, showing the original entries of promissory notes left with said bank for collection on December 11, 1875?

A. I have.

Int. 3. Please examine this book or the entries therein under the last-mentioned date, and state whether you received a promissory note of A. M. and E. J. Sweet for collection from or on account of said firm.

(Counsel for defendants Davis objects, as it is admitted in the
204 answer of this defendant that the complainants held the notes of Sweets as averred in the bill, and it is immaterial whether the note was left for collection at this or any other bank or not.)

A. Yes, we did.

Int. 4. Please describe this note, giving its date, amount, & when due & its bank number.

(Same objection.)

A. Jackson Bro. & Co. deposited on the 11th of December, 1875, a note drawn by A. M. & E. J. Sweet (No. 1785), dated January 1, 1875, at 1 year after date, due January 1, 1876, for $1,833.33, with 6 months' interest at 8 per cent.

Int. 5. Have you with you the book of said bank, containing the original entries of deposits or moneys paid into said bank on acccount of collections from promissory notes, on the 4th day of January, 1876?

(Objected to by same counsel.)

A. I have.

Int. 6. Please examine this book and said entries, and state whether any money was paid into said bank for or on account of collections left
205 with said bank by said firm. If yea, state what the entry is.

(Same objection.)

A. On the 4th day of January, 1876, there was paid to the credit of Jackson Bro. & Co., collection No. 1785, Sweet, $1,967.88.

Int. 7. Does this collection No. agree with the No. of the note referred to in your answer to interrogatory 4?

(Same objection.)

A. It does.

Cross-examination by counsel for defendants Davis:

X-int. 8. Are the books you have referred to, kept by you?

A. No, sir.

X-int. 9. Do you know anything of their accuracy of your own knowledge?

A. I do not, but I suppose they are.

X-int. 10. Do you know who paid that note?

A. I do not.

X-int. 11. Do you know anything of E. J. Sweet calling at your
206 bank after this note matured, and that that note was shown to him?

A. I hardly think so, as the note was paid on the day it matured. I have no recollection of his calling there.

Redirect by counsel for pl'ffs:

Int. 12. Were not the entries mentioned made by gentlemen in the employ of said bank, at the time, as clerks or book-keepers, and made in the ordinary course of the business of the bank?

(Objected to by counsel for def'ts Davis, unless Mr. James knows the matters inquired about of his own knowledge.)

A. The entries were made by gentlemen employed in bank at that time—one as collection clerk, and the other receiving teller, and were made in the ordinary course of the business of the bank.

C. A. JAMES.

Subscribed and sworn to before me this 21st day of March, 1878.

JOHN N. OLIVER,
Examiner in Ch'y.

207 JOHN A. RUFF, being duly sworn, deposed as follows;

I am a resident of this city, and cashier of the Metropolis Savings Bank of the city of Washington, D. C.

Int. 1. Did Charles T. Davis keep an account with the Metropolis Savings Bank of the District of Columbia, in January, 1876?

A. He did.

Int. 2. Have you with you his account with this bank during January, 1876?

A. I have.

(Counsel for complainants insists upon his rights at this point to examine the account of Mr. Davis with this bank, to which his (Davis') counsel objects, and requests as such counsel the witness not to allow such inspection by the said solicitor or Mr. Milton C. Barnard unless he is compelled to produce the books for the purposes of inspection or evidence by an order of court. And he instructs the witness that as a matter of law
208 he is not compelled to allow such inspection or the use of the book in any case before an examiner who has no judicial functions until after the court has passed upon the question whether the complainants have the right to call for the production of the books, notwithstanding the fact that he may have been served with a subpœna duces tecum, which said subpœna only requires him to attend the session before the examiner and bring with him the book therein specified, but does not require him to allow any inspection of the book or its use in any wise when an objection thereto has been made until after an order of court in the premises.

The examiner here states that the foreging was taken down at the request & from the dictation of Mr. C. A. Elliot, counsel for defendants Davis.

Complainant's counsel request the examiner to instruct the witness that

it is not necessary for him to pay any attention to the interruptions of counsel; that he (the witness) and the book are here for the purpose of evidence in this case, and that counsel for complainants have the
209 right to inspect the book for the purpose of conducting the examination.

The attention of the examiner is respectfully called to equity rule No. 64 of the supreme court D. C., touching his power or authority to give any instruction to the witness.

The examiner considers that he has no power to instruct the witness in the matter.)

Mr. C. A. ELLIOT. As the attorney of Mr. Davis, I instruct and request the witness not to allow the private account of Mr. Davis to be examined unless compelled, as it is a well known and well recognized custom that the accounts of individuals with banks are sacred and confidential.

(Counsel for complainants requests the examiner to make a correct copy of the debit and credit entries of January, 1876, in this book, which is now before the examiner of the accounts therein of Charles T. Davis with said bank.

Counsel for defendants Davis reads from equity rule 64 as fol-
210 lows: "And the examiner upon all examinations may state any such special matters to the court as he shall think fit," and the counsel for def'ts Davis also requests the examiner to certify the deposition of Mr. Ruff for instructions to him.

To which counsel for plaintiffs objects, and the examiner, upon reference to sections 868 and 869 of the Revised Statutes of the U. S., refuses to certify the matter as requested.)

(Counsel for defendants Davis here asks Mr. Edwards, of counsel for the complainants, what he expects to prove by the production of this account.)

Mr. EDWARDS. We expect to prove that the defendant Charles T. Davis paid the note first falling due, described in pl'ffs' Exhibit No. 1, and being the same note described in the deposition of the witness James as paid at the Bank of Washington, January 4, 1878, by check on The Metropolis Savings Bank, of the District of Columbia, and that the check was
211 charged to said Davis in his account with the last-mentioned bank.

(Counsel for defendant Davis, saving the question of the admissibility and materiality of the evidence, admits the fact.

Copy of the account as requested here made by examiner and filed & marked Exhibit J. N. O. No. 4.)

Int 3. Examine this book and the account of Charles T. Davis therein and state when it was first balanced after January 1, 1876.

(Counsel for defendants Davis instructs or requests the witness not to answer the question, for the reasons hereinbefore given.

To which counsel for pl'ffs protest.)

A. I think I have a duty to perform here as a witness to answer that question. The next balance after the 1st of January was made on the 12th of February.

Int. 4. Does the book show any entry or indicate in any way that the checks drawn by Mr. Davis against this account were then delivered or surrendered to him?

212 A. It does.

Int. 5. Please read from the debit side of this account against Mr. Davis the items charged against him, between the 1st and 15th of January, 1876, if there are any, giving the dates and amounts.

(Counsel for def't Davis objects, as he has already admitted the fact sought to be proved by the introduction of this bank account and this question, as well as any other question that may be propounded to this witness for that reason, and further that this question applies to matters entirely outside of this case.)

A. On January 3 there were checks paid to the amount of $9.95. On January 4 checks were paid to the amount of $26.95. On January 5 checks were paid to the amount of $1,907.88. It looks like this was one check, but I cannot say. I find upon reference to the original entry on the journal of the bank that this item of $1,907.88 is included in one check.

213 (Counsel for pl'ffs now stops the witness and informs him he need not give any other items unless requested to do so by counsel for the other side now present, to which counsel present for the other side have no objection.)

No cross-examination.

JOHN A. RUFF,
Cashier of the Metropolis Savings Bank, Dis. of Col.

Subscribed and sworn to before me this 21st day of March, 1878.
JOHN N. OLIVER,
Examiner in Chancery.

Adjourned to March 29, 1878, 1 p. m.

MARCH 29, 1878—1 p. m.

Met pursuant to adjournment. Present, Edwards & Barnard, counsel for the pl'ff's; Charles A. Elliott, esq., counsel for defendants Davis.

214 CHARLES C. GLOVER, being duly sworn, did depose and state, in answer to questions by counsel for plaintiffs:

Int. 1. Where do you reside, and in what business, if any, are you engaged in?

A. I reside in Washington City, and am engaged in the banking business; I am a member of the firm of Riggs & Co., bankers, doing business in this city.

Int. 2. How long have you been a member of the firm of Riggs & Co.?

A. Since the 1st of January, 1874.

Int. 3. Do you know Charles T. Davis, of this city?

A. I do.

Int. 4. Did your firm keep a book of moneys or checks deposited by your customers at the counter of your bank, during the month of September, 1876?

A. Yes.

Int. 5. Have you that book with you?

A. Yes.

Int. 6. Please examine that book and state whether it contains any entry, or entries of money, checks, or drafts, deposited with your
215 firm to the credit of Charles T. Davis, on Sept. 28, 1876, and if yea, state the amount or amounts so deposited.

(Counsel for defendants Davis objects, because it is immaterial and irrelevant to this suit whether the defendant Charles T. Davis had an account at that time, or made any deposit, and he instructs the witness that he is not bound to disclose the account of said Davis or any item thereof, unless compelled so to do by an express order of the court. The subpœna, duces tecum, with which he has been served, only requires him to produce the book before the examiner, and the words therein "for inspection, and to be used as evidence," were inserted wholly gratuitously by complainants' solicitor and have no binding force upon him.

To which counsel for the compl'ts state to their witness, now on the stand, that he is not bound to pay any attention to the instructions, remarkss or suggestions of the learned counsel for defendants Davis, but his
216 duty is simply to answer questions propounded.

But, counsel for defendants Davis, adds he must follow the custom of bank officers in such cases.)

A. I find here on the 28th day of September, 1876, an entry to the credit of Charles T. Davis of $5,150 in checks.

Int. 7. When money, checks, or drafts are deposited with your firm by your customers, are such deposits accompanied by any memorandum or ticket made by the depositor?

A. Usually by a ticket made by the depositor, describing the deposit, giving the date, amount, items, and signature of the depositor.

Int. 8. Does your firm keep these memorandum or deposit tickets?

A. Yes.

Int. 9. Have you searched among the tickets accompanying deposits with your firm on Sept. 28, 1876, for the ticket or memorandum accompanying the deposit, as you have stated, by Charles T. Davis on that day; and, if yea, with what result?

217 (Objected to by counsel for def'ts Davis as immaterial.)

A. I have searched, and find a ticket describing the deposit I have mentioned.

Int. 10. Have you that ticket with you; if so, please produce it?

A. I have it, and produce it.

(Paper introduced in evidence and filed and marked Exhibit J. N. O. No. 5.)

Int. 11. Are you acquainted or familiar with the signature of Charles T. Davis?

A. I am quite familiar with it.

Int. 12. Examine this deposit ticket, marked Exhibit J. N. O. No. 5, and state in whose handwriting the signature "Charles T. Davis" is.

A. It is in the handwriting of Charles T. Davis.

Int. 13. From an inspection of this ticket and your books can you state whether this deposit by Charles T. Davis consisted in money or checks?

A. It consisted in checks.

Int. 14. At the time this deposit was made by Charles T. Davis did he keep an account with your firm?

A. Yes, sir; he did.

218 Int. 15. Do you know Samuel T. Williams?

A. I do.

Int. 16. Did he keep an account with your firm in September, 1876?

A. Yes, sir.

Int. 17. Did your firm in September, 1876, keep a book wherein all checks drawn on the firm by your customers or depositors were entered?

A. Yes, sir.

Int. 18. Have you this book with you?

A. I have.

Int. 19. Examine the entries therein and state whether any check or checks was or were charged to Sam'l T. Williams, as paid on his account on September 28, 1876; if yea, describe such check or checks.

A. I find one check for $5,000 charged to the account of Sam'l T. Williams on the date mentioned. This is the only check charged to him on that date.

Int. 20. Can you tell from your books what the date of this check is?

A. No. We can only give the date when paid. This check was
219 paid September 28, 1876.

Int. 21. Can you state when the account of Mr. Sam'l T. Williams with your firm was first balanced after September 28, 1876? If yea, give the date.

A. Mr. Sam'l T. Williams' account was first settled after September 28, 1876, and his checks surrende'd to him, on the 9th day of January, 1877.

Int. 22. Did this settlement include the check for $5,000, you have just mentioned?

A. Yes.

Int. 23. By whom are these books, viz, the one containing the deposits by your customers and the other of checks paid in their account kept?

A. The first is kept by the receiving teller, and the second by one of the bookeepers who were at the time in the employment of our firm. The entries were made in the ordinary course of business.

(Counsel for defendants Davis objects at this point to the questions put to the witness, on the ground that the testimony is immaterial and inadmissible.)

220 Cross-examination by CHAS. A. ELLIOT:

X-int. 24. How do you know that the deposit made by Davis, as you have stated, was by checks, and not in currency?

A. It is so stated in the original entry on our deposit book, that the deposit consisted of checks, and it so appears on the face of the deposit ticket.

X-int. 25. Do you know anything about the accuracy of those books you have referred to?

A. They are the regular records of the bank, and have been proved by the settlements subsequently made of those particular accounts. I confine myself to the accounts of Davis and Williams.

X-int. 26. Do you know of the settlements proving the accuracy of your own knowledge?

A. Certainly; I examine pretty much all the accounts of the bank as they are settled and sent out.

X-int. 27. Do you recollect examining these particular accounts?

A. No; I do not.

221 X-int. 28. Is it not a fact that the only reason you have for testifying as to the accuracy of the entries in the books, is that they are the books of the bank, which of course you presume to be correct?

(Objected to by pl'ff's counsel, because this witness has fully answered, which answers fully explain what the witness knows about the accuracy of these books.)

A. No; that is not the only reason, because we produce in evidence the deposit ticket of Mr. Charles T. Davis, which agrees with the entry made on our books under date of September 28, 1876. I confine my answer to the particular date in question, to wit, the 28th September, 1876.

X-int. 29. Do you know, of your own knowledge, that that ticket was left there by Mr. Charles T. Davis?

A. No; Mr. Davis was in the habit of making his own deposits.

CHAS. C. GLOVER.

Sworn to and subscribed before me this 29th day of March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

222 MARCH 30, 1878.

R. K. ELLIOT recalled. By Mr. EDWARDS:

Int. 1. Do you know who paid the money, if any was paid, on the day of sale, on account of the deposit required by the terms of the advertisement, when you and your co-trustee sold this property, as you have stated.

A. My recollection is that some money was paid immediately after the sale, on account of the deposit by Charles T. Davis, to Dowling, the auctioneer.

Int. 2. Examine the paper now shown you, marked Exhibit J. N. O., No. 7, being the receipt to you and your co-trustee for $77.74, and state in whose handwriting the signature thereto, "Chas. T. Davis," is.

A. It is in the handwriting of Charles T. Davis, and was written by him in my office, to the best of my recollection.

(The paper last mention', filed, offered in evidence, and marked across the face thereof Exhibit J. N. O., No. 7.)

Int. 3. Are you acquainted with the handwriting and signature
223 of Charles T. Davis?

A. Referring to my last answer, I say yes.

Int. 4. Examine the paper now shown you, marked Exhibit J. N. O., No. 8, being a receipt to you and your co-trustee, for insurance and interest on taxes, and state in whose handwriting the signature thereto, "Charles T. Davis," is.

A. It is the proper signature of Charles T. Davis, and was delivered to me by him as one of the vouchers on account of the distribution of the cash required to be paid on the property. The amount of the receipt was withheld by him in the settlement, and the receipt furnished in lieu of the money.

(The said receipt is offered in evidence, filed, & marked Exhibit J. N. O., No. 8.)

WITNESS. I desire to add to my testimony, with reference to the
224 "order discontinuing the sale first advertised," that I may have received from Mr. Dowling the order of C. T. Davis to that effect, as he, Dowling, suggests in his deposition. If I did, and I think it probable, I received it by mail, and it is among my letters, very likely.

Cross-examination by Mr. C. A. ELLIOT:

X-int. 5. In your answer to the 1st int. you have stated that the deposit at the sale was made by Charles T. Davis. Do you know whose money that was?

A. I do not; I only know the fact that it was delivered by Davis.

X-int. 6. In your last statement in your direct testimony you refer to an order of C. T. D., 'drawing the advertisement. Do you recollect ever seeing such order?

A. I cannot say that I do now recollect the fact referred to, but I have a very strong impression that I did see something of the kind.

X-int. 7. Do you recollect that the something of the kind was
225 signed by Charles T. Davis?

A. If it had not been signed by Charles T. Davis, as trustee, I certainly should have remembered the fact, because there would have been trouble with the auctioneer. Of course I cannot, at this time, state positively anything about the paper I refer to.

R. K. ELLIOT.

Subscribed and sworn to before me, this 30th March, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

Adjourned to April 4, 1878, 1 p. m.

226 APRIL 4, 1878—1 p. m.

Met pursuant to adjournment. Present, Edwards & Barnard, counsel for pl'ffs; Mr. W. A. Maury, of counsel for Sam'l T. Williams; Chas. A. Elliot, counsel for defendants Davis; Charles T. Davis, and Mr. Callaghan, counsel for defendants Sweet, and Edwin J. Sweet.

Whereupon WM. B. JACKSON, being duly sworn, deposed as follows:

Int. 1. Are you a member of the firm of Jackson, Brother & Co., complainants in this suit?

A. I am.

Int. 2. Who constitute the members of said firm, and in what business is the firm engaged?

A. B. L. Jackson, W. B. Jackson, and George J. Suefferle. We are engaged in the general grocery business. I and B. L. Jackson are brothers.

Int. 3. How long have you and your brother been engaged in business as grocers in this city?

227 A. B. L. Jackson and Brother have been engaged in business together 40 years. I cannot now say when the present firm was organized. The present firm have been in business about 15 years.

Int. 4. Did your said firm hold and own the 4 promissory notes of the defendants, Addie M. Sweet and Edwin J. Sweet, mentioned in the Exhibit No. 1, filed with the bill in this cause?

A. We were in possession of the notes specified.

Int. 5. What value, if any, did you give for these four notes?

A. We gave their full value less 2 per cent. as a premium. They bore 8 per cent. and we made them equal to 10.

Int. 6. From whom did you receive them?

A. Charles T. Davis.

Int. 7. When did you receive them?

A. Shortly after their issue; probably 10 days. I mean by their issue the date of the notes.

Int. 8. At the time you received these notes as you have stated
228 were any other papers handed to you by said Davis as a part of the transaction? If yea, describe them.

A. The deeds of trust, with Mr. Ashford's abstract; that is all at that time.

Int. 9. Did you or not receive at or about the same time a policy of insurance?

A. Yes, we did; I had forgotten that.

(Question objected to by Mr. C. A. Elliot.)

Int. 10. Have any of those 4 notes been paid?

A. The first has been paid.

Int. 11. When and where was it paid?

A. It was paid at maturity, at the Bank of Washington.

Int. 12. Do you know who paid it?

A. I do not; I have heard, but do not know the fact.

Int. 13. Has any portion of the principal of the other three notes been paid?

A. None.

Int. 14. From the time you recived these four notes to the date the one first falling due was placed in the bank for collection, were they, or any of them, ever out of the custody or possession of your firm, to your knowledge?

A. Never.

229 Int. 15. Was the second note, falling due Jan. 1 & 4, 1877, placed by your firm in bank for collection; if yea, when, and in what bank?

A. It was placed in the Bank of Washington 10 days, perhaps 2 weeks, before its maturity.

Int. 16. Has it been withdrawn? If yea, state when.

A. It was withdrawn on the day of its maturity for the purpose of having a waiver entered upon the back of the said note.

Int. 17. From the date the note first falling due was placed in bank for collection, as you have stated, up to the time of the filing of the bill in this cause, has any of the three unpaid notes (except as to the 2d, while it was in bank for collection) been out of the possession or custody of your firm to your knowledge?

A. Never.

Int. 18. Did you, or any member of the firm of Jackson, Brother & Co., to your knowledge, ever authorize or consent to the release by the defendants Charles T. Davis and William Stickney described in the bill?

230 A. Never.

Int. 19. Did you, or any member of your firm, to your knowledge, know anything about the execution and delivery of the release at the time it was executed, or take any part therein?

A. None whatever.

Int. 20. Is the firm of Jackson, Brother & Co. the present owners of these three unpaid notes?

A. They are.

Cross-examination by Mr. MAURY, of counsel for def't Williams:

X-int 21. Are you entirely sure that you saw the deed of trust when you took the notes secured by it?

A. That is my recollection, distinct, that I did, for the reason that we took no papers from Mr. Davis whatever without having real estate security.

X-int. 22. When did you first hear of the release of the deed of trust?

A. The date I cannot fix exactly, for the reason that I did not
231 learn until through Mr. Morsell, who had the deed of trust for examination. The reason I handed the deeds of trust to Mr. Morsell was that the interest had been defaulted, and Mr. C. T. Davis had made repeated promises to pay, but had failed in all cases. I at that time handed the papers to Mr. Morsell for examination, with a view to learn how the matters stood upon the record, and with a further view of foreclosure, if necessary.

X-int. 23. Why did not Mr. Ashford's abstract satisfy you as to how the matter stood on the record?

A. It did at that time, perfectly. This examination was all subsequent.

X-int. 24. Why did you suppose that anything subsequent could hurt your position if it was good when you took the notes?

A. I had no reason to suppose, except that matters were not paid at maturity or the interest, and, as I said, I was taking steps to fortify myself with a view to foreclosure, and about that time, or a little
232 after, I met Mr. Sweet on the street, who asked me if I knew of the release of this property. I told him that I did not, but that I had handed all the papers in my possession relating to Davis' transactions to Mr. Morsell for examination.

X-int. 25. In what way did you expect to fortify yourself by employing Mr. Morsell?

A. Well, as I said, in no other way than to ascertain what steps to take; I had reason to presume that something was going wrong.

X-int. 26. What made you suppose something wrong was going on?

A. For the reason that neither the principal or interest was being paid, and the repeated promises, all of which were failures. From time to time I had pressed this matter, and Mr. Charles T. Davis implored of me, "For God's sake do not call upon the parties." I had previously threatened to call upon Mr. Sweet and Mr. Terry. He said they would only come to me with tears in their eyes, and for God's sake to spare them, if I could.

233 X-int. 27. How did the failure to pay interest bear on the title of your real estate security and induce you to employ Mr. Morsell?

A. I was disposed then to wind the matter up and I wanted to be satisfied as to what I had.

X-int. 28. Did you not have Mr. Ashford's abstract?

A. I had.

X-int. 29. What other data did you suppose you needed to enable you to enforce the trust?

A. I knew of none other, except that I gave him all the papers relating to Davis's transactions to search into. About this time it was rumored around that Charles T. Davis was very tricky, and had been tricky, and

that he had swindled several persons—those were the words mentioned to me by persons on the street.

(Latter part of the answer objected to by Mr. C. A. Elliot, counsel for Chas. T. Davis.)

X-int. 30. Did you not have some other object in employing Mr. Morsell than the foreclosure of the trust?

234 A. None.

X-int. 31. Did you know or suspect that the release had been executed before you employed Mr. Morsell?

A. I did not know, but as I said before, I had reason to believe that something was going on wrong, but what it was I didn't know. I called at Mr. Davis' office repeatedly, but found him absent, and did not feel disposed to continue the matter any longer.

X-int. 32. Did you never speak of suing the parties to any of the three notes held by you?

A. Not to my recollection; that is all foreign—not to my recollection at all.

X-int. 33. Did you never speak of holding the parties liable?

A. Oh, yes. I cannot answer fully unless I am permitted to go on in my own way. After Mr. Morsell gave me his report, which was all unfavorable to me, by reason of releases without my knowledge or con-

235 sent, I asked him then what he thought of bringing suit with a view of satisfaction. I think those were the words. He said he had not given the matter much reflection, but thought it very bad treatment, and did not advise suit for the reason that it would be expensive. After leaving Mr. Morsell's office I went to Mr. R. K. Elliot, and said to him that he was trustee in a matter which we held, and cautioned him about the release. He said he did not need caution on my part, for the reason that he was always cautious. I said to Mr. Elliott that we had been badly treated by Mr. Chas. T. Davis, and that in all probability we would have to carry the matters to court. Mr. Elliot rather advised that course. I asked him if he could approximate the probable cost. He said, in the neighborhood of $100—he presumed. To that I said I would see Mr. Morsell, and he would confer with Mr. Elliot, and as they might decide I might or might not agree. There the matter ended, and I decided not to go at that time to the court. A few days afterwards I went to

236 Mr. Edwards' office, and found him absent. I left word for him to call at my place of business, which he did the next day. I exhibited the papers to him—the notes, trust papers, and insurance. He examined them casually, and said that he thought there was something in them, gave me a receipt for all the papers, and said that he would report to me in a day or two. He did so, and we agreed as to terms for a rigid prosecution.

The cross-examination of this witness is suspended so far as defendant Williams is concerned, to be resumed if deemed necessary.

Cross-examination by C. A. ELLIOT, counsel for defendants Davis.

X-int. 34. You have stated that you recollect that you saw the deed of trust when you took the notes secured by it for the reason that

237 you took no paper from Mr. Davis without having real estate security. Is that the only reason that you recollect receiving the trust?

A. I know of no other reason.

X-int. 35. Do you recollect receiving Mr. Ashford's abstract, and the policy of insurance for the same reason only?

A. I know of no other reason.

X-int. 36. Which Mr. Davis do you refer to?

A. Mr. Charles T. Davis.

X-int. 37. Do you include Mr. Augustus Davis or the firm of A. Davis & Son, in your reference that you received no paper unless secured upon real estate?

(Objected to by counsel for pl'ff's, as irrelevant and immaterial.)

A. My recollection is that we received real estate security for all notes received from the party or parties, because sometimes it was one and sometimes the other, Mr. Augustus Davis or Charles T. Davis, notwithstanding which we asked their endorsement, as a further security, on all notes received.

238 X-int. 38. When did your firm adopt this rule?

(Objected to by counsel for pl'ffs as immaterial and irrelevant.)

A. It was customary with us, generally, from all parties from whom we received notes.

X-int. 39. Did you deviate from this custom?

(Same objection.)

A. We may have done so.

X-int. 40. Did you deviate from this custom in the case of the Davises, or either of them?

(Same objection.)

A. We may have done so. Our usual practice is to require the endorsement of the parties from whom we take the notes.

X-int. 41. How, then, are you able to recollect the reception of the trust and other papers at the same time with the notes, on account of your firm having "a custom" which may have been deviated from?

(Objected to by counsel for pl'ffs', because irrelevant and because the question assumes a fact the witness has not stated.)

239 A. My reason is, that it would be usual to receive all papers pertaining to a negot'ation of the kind.

X-int. 42. Was not the endorsement and delivery of the notes a transaction between your firm and Augustus Davis and Charles T. Davis jointly, or A. Davis & Son?

A. That is a question I cannot answer; I do not recollect.

X-int. 43. Were the 4 notes endorsed and delivered to your firm at the same time?

A. I do not recollect that; I am not sure that they were.

X-int. 44. What is your best recollection?

A. That is my best recollection.

X-int. 45. Were not the 3 notes first falling due endorsed and delivered to your firm in Feb'y, 1875, and the 4th and last note subsequently?

A. I do not recollect positively; such a thing is possible.

X-int. 46. Do I understand you to say, in your examination-in-chief, that whatever notes were endorsed and delivered to you by the

240 Davises or C. T. Davis, as you have stated, were so delivered for money paid by your firm to them or either of them?

(Objected to by counsel for pl'ffs, and counsel for pl'ffs asks the counsel

now cross-examining the witness whether his question embraces any notes delivered to the complainants other than the 4 notes of the Sweets, of which witness has testified.)

Mr. C. A. ELLIOT. I refer to the notes of the defendants Sweet, but do not mean to admit that the notes were delivered all at the same time.

A. It was for money and bonds. We gave them money and 3.65 bonds of full value as agreed upon.

X-int. 47. How much money?

A. That I don't recollect. It may have been all money, or part money and part bonds. I refer to the transaction of these Sweet notes. It is just as likely that the bonds were in some other transaction.

X-int. 48. What was the value paid by your firm for the Sweet notes?

A. I do not recollect. It may have been part bonds and part money.

241 X-int. 49. Do your books show anything of this transaction?

A. They do not, sir.

X-int. 50. Did your firm, in February, 1875, hold a note of Augustus Davis for $5,000, which note was unsecured?

(Objected to by counsel for pl'ffs as immaterial.)

A. If we held a note of Augustus Davis for $5,000 it was most assuredly secured.

X-int. 51. Upon real estate?

A. I don't recollect about that.

X-int. 52. Did you hold such a note?

A. I have no recollection of it; not the least.

X-int. 53. (A note of Augustus Davis, dated December 8, 1874, for $5,000, payable 70 days after date at the National Bank of the Republic, to the order of Robert Clarkson, C. C. Martin, & J. C. Walker, and by them endorsed, is shown to the witness.) Was that note in the possession of your firm, and owned by them, at the date of its maturity?

A. That note has certainly been in our possession.

(Counsel for complainants requests that this note be left with

242 the examiner for inspection.

Counsel for defendants Davis here files the note, which is marked Exhibit J. N. O., No. 9½.)

X-int. 54. How did it leave your possession?

A. I do not recollect.

X-int. 55. Were not the 3 Sweet notes first falling due, of $1,833.33, each endorsed and delivered to you in consideration of the surrender of this note at its maturity (J. N. O., No. 9½), and whatever difference paid in money, or was there any difference?

A. I have no recollection of it at all.

X-int. 56. Might not that have been the case?

A. Such a thing is possible.

Adjourned to April 6, 1878, 2 p. m.

243 APRIL 6, 1878—2 p. m.

Met pursuant to adjournment. Present, counsel for plaintiffs; Mr. Chas. A. Elliot, counsel for defendants Davis; Mr. Callaghan, counsel for defendants Sweet; Charles T. Davis, and Edwin J. Sweet.

Cross-examination of Wm. B. Jackson resumed.

X-int. 57. Does your firm keep books; if so, would they not show how much money or how much 3.65 bonds or any other bonds were delivered to Charles T. Davis for the Sweet notes, if that were the value paid.

A. Our firm keeps books, but no books recording those matters. We discount notes from time to time, and if the money is in hand we pay it; if not we give a check. My recollection is distinct that we gave Mr. Davis $3,800 or $4,000 in 3.65 bonds at 75 cents on the $1; but at what date, or for what transaction, I don't know.

X-int. 58. Are you in the habit of discounting paper to the amount of $8,000, and upward, without recording that transaction in some book, or having some memorandum of it?

244 A. Such transactions are not very frequent; but, as I said before, we keep no book recording those transactions.

X-int. 59. How then are you able to account for that much money, or any money paid in discounting paper, when your accounts or books are settled?

(Objected to by compl't's counsel, because the witness has stated that in matters of this kind his firm kept no books.)

A. We have no books to settle about those matters. When Mr. Davis or any other party brings a note to us for discount, we agree upon the amount of money to be paid, 8 or 10 per cent. interest, as it may then appear before us; the amount is arrived at, he accepts the money or checks or, perhaps, both, we receive the note, and that is an end of it, except its maturity.

X-int. 60. Whose money is paid?

A. The money of Jackson, Bro. & Co.

X-int. 61. Realized from the income of the business?

(Objected to by pl'ffs' counsel, as irrelevant.)

245 A. Yes; such receipts go into the common funds. We keep no separate accounts of discounts or merchandise.

X-int. 62. Your books would show the receipts of the business for a given time to be so much, would they not?

(Same objection.)

A. They would not; our books being kept in the plainest form possible, in single entry of debit and credit.

X-int. 53. Do you know that the Sweet notes were received by your firm for any value at all?

A. I certainly do, and that we gave full value in money or in bonds, as I said before, less the interest at the time of negotiation.

X-int. 64. How do you know?

A. From natural results, and a full recollection that we always gave value received for whatever we obtained.

X-int. 65. Have you any recollection that you gave 3.65 bonds or money for these Sweet notes?

(Objected to by compl'ts' counsel, because the witness has stated
246 on x-examination plainly and clearly his best recollection of this matter.)

A. My answer was that I gave money or bonds, and perhaps both, for those notes; I really don't recollect whether I gave bonds in that especial transaction or not; we had quite a number of transactions with Mr. Davis

from time to time, and gave him money generally. There was one transaction of bonds, but I cannot say whether it was this one or not.

X-int. 66. How is your recollection as to money in this particular transaction?

A. My recollection is no better than in the preceding answer.

X-int. 67. Was not the 4th and last Sweet note (the note of $2,500,) endorsed to your firm some time, perhaps a year or 18 months after the delivery of the other three in consideration of the surrender of an unsecured note or notes upon which C. T. Davis was bound, which was in possession of your firm?

A. I have no recollection of any part of that transaction.

247 X-int. 68. Might not that have been the case?

(Objected to by compl'ts counsel.)

A. I think it is very improbable.

X-int. 69. Question repeated.

(Same objection.)

A. Same answer; I do not know of any other answer I could give.

X-int. 70. Was not your firm in the years 1874 and '75, and '76, & '7, in the habit of discounting paper for Charles T. Davis, very largely? I mean either his paper; or paper brought by him?

(Objected to by pl'ffs' counsel.)

A. Not very largely, but it probably reached an amount of $20,000, or $25,000, in the years 1874, '5, & '6, but I think in no part of 1877.

X-int. 71. Did you not have confidence in the integrity of Charles T. & Augustus Davis during the time you have stated, but more especially in the early part of 1875, and did you not regard them individually and jointly perfectly solvant, and in good circumstances?

(Objected to by pl'ffs counsel.)

248 A. We certainly did up to the time of their default of interest and principal in these matters, [while we had heard upon the street some time before that they had failed, and further, that Charles T. Davis had attempted to practice a fraud upon Mr. Ashford by borrowing secured notes from a party and asking Mr. Ashford to make a release upon that data. He suspicioned something wrong and declined to execute the deed.]

(The portion in brackets objected to by Mr. C. A. Elliot, counsel for defendants, Davis, as hearsay and irresponsive.)

X-int. 72. When did you first hear that the Davises had failed or anything detrimental to the character, for integrity, of Chas. T. Davis?

A. I cannot fix the date; I should think at least 12 months ago, that I heard of the rumor of failure, but it was not so long ago that I heard of the rumors in regard to Charles T. Davis.

249 X-int. 73. Then your confidence in the Davises was unimpa'red in January & February, 1875?

(Objected to by pl'ffs' counsel.)

A. My impression is that it was. I had confidence in them up to that time, perhaps later.

X-int. 74. And you regarded them as solvent and in good financial condition at that time, did you not?

(Objected to by same counsel.)

A. I regarded them so until I heard of the rumors and of their failure to keep their engagements with us.

X-int. 75. Was that subsequent to January, 1875?

A. Yes, I presume it was. I certainly had not lost confidence at the time the Sweet notes were negotiated, nor for some time afterwards, but for how long I cannot say.

X-int. 76. By whom was the interest on the notes discounted by your firm for the Davises paid?

(Objected to by Mr. Edwards, who asks the counsel now examin-
250 ing the witness to say whether this question is intended to apply to the Sweet notes in controversy or as a general question in all matters of discount.)

Mr. C. A. ELLIOT. Generally and particularly.

A. It was paid by Chas. T. Davis.

X-int. 77. Did not your firm depend upon Chas. T. Davis to collect the interest on the notes discounted for him?

(Objected to by pl'ffs' counsel, because there is no proof that Chas. T. Davis collected the interest.)

A. When we discount notes for parties we expect those parties to look after and save us the trouble of calling upon parties for the interest, and in those very cases Chas. T. Davis volunteered to see that the interest and principal were paid at maturity, and in the event of failure he promised to pay himself, as A. Davis & Son were endorsed on the notes generally. He manifested an interest, and said he would see to it at all times.
251 After repeated failures we then took steps to look after the matters for ourselves.

X-int. 78. Did you not look to Charles T. Davis, or the firm of A. Davis & Son for the payment of the Sweet notes?

(Objected to by pl'ffs' counsel.)

A. Most assuredly not. We did in part. We had real estate security with abstract.

X-int. 79. Why did A. Davis & Son guarantee the payment of the second note, falling due January 1 & 4, 1877?

A. For the reason that we obtained the notes from A. Davis & Son or Charles T. Davis, and they were very willing to endorse the same, and as a matter of course we felt that we could not have too much security.

X-int. 80. At whose request?

(Objected to by pl'ffs' counsel.)

A. I may have asked; I think it is quite as likely that Charles T. Davis volunteered to endorse the note.

X-int. 81. Did you not inform Mr. Sweet that if you could not make the money out of the Davises or they did not pay the notes you would hold him, Sweet.

(Same objection.)

252 A. No, sir; I knew my recourse, therefore could not.

X-int. 82. Did you not threaten to sue him (Sweet) on the notes?

(Same objection.)

A. I did not, that I have any recollection of. Mr. Sweet was in our office some months, and before this thing came out, with Mr. Davis. Mr. Davis was there to ask indulgence in some other case. At that time I said to Mr. Sweet that his note and interest were still unprovided for, which seemed to startle Mr. Sweet very much, with the remark that he had no notes out, that he had settled the matter in full with Charles T

Davis, to which reply I was more startled than he seemed to be, as I was certainly.

X-int. 83. What did you say to that statement?

A. I said nothing, for the reason that both parties departed instanta, and then it became my time to see and look out for myself.

X-int. 84. What did you expect to see?

253 A. I expected to have the trust looked into with a view to foreclosure, and then I would know the result.

X-int. 85. You know you held Sweet's notes, and hence his statement in the light of that was false; what, then, did you expect would be shown by the trust or how aided in your foreclosure?

(Objected to by pl'ff's' counsel as to form, for the question simply states counsel's conclusion.)

A. We knew that we had Mr. Sweet's notes. I did not know that his statement was false. I knew of no other steps to take than the course I pursued, and that was to inform myself fully, with the intention of authorizing the trustees to foreclose.

X-int. 86. Inform yourself as to what?

A. As to the necessity of winding up all matters in our hands, because of the apprehension of taint in every transaction with Charles T. Davis.

X-int. 87. How, then, did you expect the land records to throw any light upon whether Sweet had any notes out or had paid his notes to Charles T. Davis?

254 A. I did not expect the land records to throw any light upon Mr. Sweet's notes. I had heard of releases being made without authority.

X-int. 88. You knew that Wm. Stickney was a cotrustee with Chas. T. Davis in the trust, did you not?

A. I did.

X-int. 89. Did you suspect that Mr. Stickney would release the property from the trust in fraud of you?

A. I had no reason to so expect.

X-int. 90. Did you not know that a release would be absolutely void and inoperative unless executed by both trustees?

A. Such a question did not occur to me, and if it had I would not have given it a second thought, but would have pursued the same course I did here.

X-int. 91. Did you not employ Mr. Morsell to ascertain whether the Sweet notes were secured?

(Objected to by pl'ff's' counsel because witness has already sworn that they were.)

A. I did, together with other notes and papers referring to Davise's matters.

255 X-int. 92. Will you be kind enough to answer the question in a more direct or plainer form?

A. I do not know how I can do it.

X-int. 93. Is it not a fact that after the second note matured and was not paid, that you called upon Chas. T. Davis respecting it?

A. I think I did more than once, and he begged indulgence from time to time; and to satisfy me on that point, he handed me a secured note made by Mr. Murtaugh, which was not then due. It fell due in about 30 days thereafter. There was a small installment of interest paid upon said

note, and then it was withdrawn. That note was handed me as collateral security. I mean by its being withdrawn, that Mr. Davis asked for it, and I gave it back to him.

X-int. 94. What indulgence did he ask, and why?

A. I threatened to see the parties, the makers of the notes. He said if I persisted in that, that they would come to me with tears in their eyes, and bother me to death.

256 X-int. 95. Why did you call upon Charles T. Davis?

A. For the reason that the papers were obtained from Charles T. Davis, and as an act of courtesy in part to him.

X-int. 96. Was it not because you looked to him or the firm of A. Davis & Son to pay the notes?

A. No, emphatically not; for the reason that I look upon real estate security as being a better guarantee than any man's word, be he ever so just.

X-int. 97. Fix the date of that interview or call upon Mr. Davis.

A. It was after the maturity of the second note, perhaps 2 or 3 weeks.

X-int. 98. Was that prior to the time you heard Charles T. Davis' integrity questioned, and the fact that releases had been illegally executed?

A. It was after, certainly. I had no occasion to call upon him before that, because he generally called upon me.

X-int. 99. You have stated that you heard rumors in regard to Chas. T. Davis not so long ago as one year. This note about which you
257 called matured in January, 1877, at which time you called. You, then, are mistaken when you say you had heard rumors in regard to Charles T. Davis, are you not?

(Objected to by pl'ffs' counsel, because it assumes a fact that the witness has not so testified to.)

A. I may be mistaken, because I cannot fix dates, and do not pretend to fix dates, from recollection.

X-int. 100. Did you know upon what property the Sweet notes were secured, i. e., the particular property involved in the suit?

A. I did, but relied in a measure upon Chas. T. Davis as to valuation, having confidence in him at that time.

X-int. 101. You usually relied upon him in such matters, did you not?

A. I did in most of the transactions with him, for the reason that I was generally pressed for time, and did not make a particular inspection of the property.

X-int. 102. Did you or any member of your firm examine this
258 property before or at the time you took these notes?

A. We did not, but relied upon the real estate security in hand.

X-int. 103. Is it not a fact that you called upon Chas. T. Davis, or he called upon you, some time after the three first notes were delivered and after the $2,500 note was delivered, and then gave you the deed of trust, abstract, and policy of insurance that you have mentioned?

A. I have no recollection of that; none whatever.

X-int. 104. Might not that have been the case?

A. Such a thing is possible.

X-int. 105. Do you read the Evening Star newspaper?

A. I do, occasionally, but not regularly.

X-int. 106. Did you read it in June and July, 1877?

A. I cannot say.

X-int. 107. Did you not see the repeated advertisement of this property for sale by Davis & Elliot, trustees?

259 A. I did not, for the reason that I rarely read advertisements of the kind unless my attention is called to it.

X-int. 108. Was your attention called to the advertisement?

A. I have no recollection of it whatever.

X-int. 109. Did you call upon Mr. Chas. T. Davis at that time with a copy of the advertisement to see about the sale?

A. If I did I have no recollection of it whatever; I think it very improbable.

X-int. 110. How did you know that the Sweet notes were secured upon the property in this suit?

A. It was so represented by Mr. Davis, and, as a further evidence, certified by the abstract.

X-int. 111. When did Mr. Davis make that representation, and what did he say.

A. I presume at the time of the negotiation he made the representation; what he said I do not recollect.

X-int. 112. Do you recollect that he made that representation in

260 any form at the time the Sweet notes were endorsed and delivered to you?

A. I do not; I presume he did, however, because of a natural consequence that he wished to raise money on those notes; what passed about them I do not recollect.

X-int. 113. Do you recollect that he tried to raise money on them?

A. I am sure that he raised money, or its equivalent, on them.

X-int. 114. A surrender of a note by you of $5,000, made by Augustus Davis, would come within the definition of equivalent, would it not?

(Objected to by pl'ffs' counsel.)

A. I presume it would; I do not say that that surrender was not in that transaction, nor do I say that it was; it might have been.

X-int. 115. Was not the first information that you had as to the release of this property derived from Sweet?

A. It was not; it may have been the first definite information, but I had heard through general rumor that some of the securities we held

261 had been released, and at that period handed the papers to Mr. Morsell for examination.

X-int. 116. If a person in whom you had confidence, and whom you regarded as financially sound, brought you a note for discount endorsed by a man in good financial condition and solvent, as you thought, would not your firm discount it without security if you desired to accommodate the parties?

(Objected to by pl'ffs' counsel.)

A. Unquestionably, provided we had money to operate with.

X-int. 117. Was Mr. R. K. Elliot your counsel at the time you say you called on him?

A. He was not. I simply went to his office with the trust-deed in my hands to caution him against a release of my trust.

X-int. 118. Did you tell him anything about the Sweet property? State fully all you said to him.

A. I did mention the Sweet property directly, but spoke of the dilemma

that we were in by reason of releases without authority by Charles
262 T. Davis, and asked him a word or two of advice as to what steps best to pursue, and he replied there was but one course, and that was to go to court; and I asked him the proximate cost. He told me $100, he presumed. I replied that I would see Mr. Morsell, who had examined the papers, and have him confer with Mr. Morsell, as I have stated.

X-int. 119. Did you not inform him that Mr. Morsell had been employed to see whether the Sweet notes were or had been secured?

A. I did not, sir.

X-int. 120. How did you come to call on Mr. Edwards in regard to the institution of this suit?

(Objected to by pl'ffs' counsel, because irrelevant and impertinent.)

A. Because I was in search of further guidance in these matters.

X-int. 121. Whom did you hear, at the time the interest on the 2nd note was not paid, say that Charles T. Davis was tricky, or question his integrity?

(Objected to by pl'ffs' counsel.)

A. I do not know about the interest on the 2nd note. I had no
263 reference to that at all. It was common rumor about his tricks about that time.

X-int. 122. Can you name one person who said that Charles T. Davis was "very tricky," and had been tricky, and that he had swindled several persons?

(Objected to by pl'ffs' solicitor.)

A. I can name parties who have named that to other parties, and have expressed surprise that we should ever have dealt with Charles T. Davis as we had, for the reason that had *he* been known to be irresponsible for some time past; and I can name the gentleman who reported to me the name of Mr. Ashford in this connection. Mr. Wm. H. Ward is the party.

Adjourned to April 11, 1878—1 p. m.

APRIL 11, 1878—1 p. m.

Met pursuant to adjournment. Present, Messrs. Edwards & Barnard, counsel for pl'ffs; Chas. A. Elliot, counsel for defendants Davis;
264 Mr. Callaghan, counsel for defendants Sweet, & E. J. Sweet.

Cross-examination of Wm. B. Jackson resumed by C. A. ELLIOT:

X-int. 123. Can you name any person or persons who you heard criticise or question the integrity of Chas. T. Davis to the time you saw him, about the period when the second note matured, in January, 1877?

A. I cannot fix the date as to that. On or about that time it was currently rumored that the court had refused to take Augustus Davis and his son on a bond. About that time it was reported on the street or in our store that Charles Davise's horses and buggy had been levied upon and seized at his door. I was informed of that by Mr. Suefferle, our partner, and he was informed by Mr. Comades, a German, whom I do not know.

X-int. 124. Had you heard anybody say he was tricky, &c.?

A. I have heard it spoken of as general rumor, but the parties I do not remember.

265 X-int. 125. Do you mean to say that these reports you heard were prior to the time you saw Davis in January, 1877?

A. That I cannot recollect. I rather think they were, but really cannot be positive about it.

Cross-examination of this witness is closed on the part of defendants Davis.

Cross-examination by Mr. CALLAGHAN, counsel for defendants Sweet:

X-int. 126. Among the papers turned over to you at the time of your purchase of Chas. T. Davis of the Sweet notes in this case you received an abstract or certificate of title. Will you please produce it & file it in evidence in this case?

(Mr. C. A. Elliot objects to the form of the question.)

A. I now produce the paper, which is filed, offered in evidence, and marked Exhibit J. N. O. 10.

X-int. 127. In answer to int. 16, you state that the note falling
266 due January 1st–4, 1877, was withdrawn from bank, where it had been placed for collection, for the purpose of having a waiver entered upon the back of the said note. (Mr. Callaghan now handing witness the paper.) Please state if that is the note, and in whose custody it now is.

A. That is the note. It belongs to the files in suit at law 18803, supreme court of the District of Columbia.

X-int. 128. Who wrote the said waiver?

A. Charles T. Davis himself.

X-int. 129. Please quote or read the waiver as a part of this *waiver*.

A. We hereby guarantee the payment of the "within note without demand, notice, or protest. Signed, A. Davis & Son, Jan'y 4, 1877."

Cross-examination by Mr. C. A. ELLIOT:

X-int. 130. You don't mean to say that Exhibit J. N. O. No. 10 was handed to you by Mr. Davis at the time you received these notes, do you?

267 (Objected to by compl'ts' sol., because witness has already stated his best recollection in respect of this certificate or abstract of title.)

A. I do. It was then or very nearly thereabouts.

X-int. 131. Do you know when the writing in lead pencil, "E. J. Sweet, lot 49, sq. 513, d. of t. for $8,000," on the back of Exhibit J. N. O. No. 10, was made?

A. Our transactions were frequent and numerous, and it does occur to me that I asked Chas. T. Davis to endorse on the back the locality of such and such property, as we had not fully examined it at the time; and we asked this to facilitate my examination; I cannot fix the time.

Redirect by Mr. EDWARDS:

Int. 132. Have you any recollection of receiving the deed of trust given to secure these 4 notes, the certificate of title, and the policy of insurance, at any other time than when you received the notes?

(Objected to by Mr. C. A. Elliot.)

A. I have not positively; we might have received the policy of
268 insurance afterwards, but my impression is we received them all at the same time.

Int. 133. In whose handwriting is the endorsement, on the three unpaid notes, of the interest that was paid thereon July 3, 1875?

A. By our copartner in business, Mr. Suefferle.

Int. 134. Was your firm the holders and owners of all of these four "Sweet" notes, when the first installment of interest thereon was paid? (Objected to by C. A. Elliot.)

A. We were.

WM. B. JACKSON.

Subscribed and sworn to before me this 11th day of April, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

269 REBUTTAL.

JULY 2, 1878—1 p. m.

Met pursuant to notice and agreement to take depositions in rebuttal, on behalf of the plaintiffs; present, Edwards & Barnard, counsel for plaintiffs; Mr. Chas. A. Elliot, counsel for defendants Davis, & defendant Chas. T. Davis; Mr. D. O. Callaghan, counsel for defendants Sweet, and Edwin J. Sweet.

Whereupon EDWIN J. SWEET, having been duly sworn, deposed as follows, in answer to ints. by Mr. EDWARDS:

Int. 1. Charles T. Davis testifies that you gave him the money to pay for recording of and acknowledgements to the release from him and Stickney to your wife, and the trust from you and your wife to him and R. K. Elliot, of September, 1876, on the same day; he thinks they were
270 recorded either on that day or the day before that; he thinks you handed him $10, out of which the different expenses of the transfer of the loan were to be paid. Is this true, or did you in fact pay any money to Davis, or any one else, for the purposes mentioned?

Mr. C. A. ELLIOT. I object.

A. It is not true that I paid him any money at the period and of the amount stated by Mr. Davis, nor for the purpose mentioned by him.

Int. 2. Did you pay any amount to Davis for the purpose mentioned? (Objected to by Mr. C. A. Elliot.)

A. I did not.

Int. 3. This same Charles T. Davis also states that just before the release of September, 1876, from him and Stickney to Mrs. Sweet was executed, you told him that you *you* were not able to pay the notes in full held by Jackson Bro. & Co., but that you wished to keep your credit good with them, and said that you could raise money temporarily on some building association stock from John W. Starr, and some money on endorsed
271 note from Henry Strasburger; that you could use this money in paying the note to Jackson Bro. & Co. temporarily, and that you and he (Davis) could have the final settlement after the notes were taken up by you. Did such conversation in fact take place?

A. No such conversation was ever had between us.

Int. 4. Did you at this time, or prior to the execution of the notes and trusts of September, 1876, know that Jackson Bro. & Co. held the notes of January 1, 1875, secured by the trust to Davis & Stickney?

(Objected to by C. A. Elliot.)

A. I did not.

Int. 5. Did you at this time in fact know this firm?

(Objected to by Mr. C. A. Elliot.)

A. Up to that time I had never met either gentleman belonging to the firm of Jackson Bro. & Co., and only knew of the existence of the firm by seeing their sign over the door.

Int. 6. Do you recollect, since the sale of July, 1877, by Davis & Elliot, trustees, having a conversation with Charles T. Davis in relation to his taking a gentleman into the premises in controversy, and
272 where you then resided? And, if so, state what explanation or excuse, if any, he made in relation to thus visiting the premises.

(Objected to by Mr. Elliot, because there was no foundation laid for this testimony, as Mr. Davis was not asked any question touching a conversation with Sweet.)

A. I do recollect distinctly of having a conversation with Mr. Davis about the visit of Wm. B. Jackson to my house, and in reply to my question as the object of his being there, Mr. Davis stated that it was with reference to some transaction with his father or mother's house adjoining my premises.

Int. 7. Davis states also that at the time of the execution of the trust of September, 1876, that you were indebted to him on unsecured paper, and on account of notes dated on the 4th January, 1876, and payable monthly thereafter, at $100 per month, & also on account of notes secured on lots No. 78 & 79, in square 193, which had been paid by him on the
273 2nd day of January; that the total am't of indebtedness at that time from you to him, and unsecured, was about $4,000. Is this true, or was there such an indebtedness unsecured as he stated?

A. It is not true that there was any unsecured indebtedness of the character mentioned by him, nor any other unsecured indebtedness to the best of my recollection; there was a secured indebtedness supposed to have been due Mr. Charles T. Davis at that time of a note of $1,833.33. There was no other secured indebtedness then matured held by Mr. Charles T. Davis against me.

Adjourned to July 5, 1878—11 a. m.

JULY 5, 1878—11 a. m.

Met pursuant to adjournment. Present Mr. Edwards, of counsel for plaintiffs; Mr. C. A. Elliott, counsel for defendants Davis.

Whereupon the examination of Edwin J. Sweet resumed.

274 Int. 8. Describe this note of $1,833.33 referred to in your last answer.

A. It was a note dated January 1st, 1875, and was the first note falling due of the series of notes given at that date as part of the purchase-money of the premises in controversy.

Int. 9. Had Charles T. Davis any authority to appropriate the 7 notes of September 27, 1876, described in the bill secured by the 2 trusts of the

same date, in any other manner than to the cancellation of the notes secured by the trust of January 1, 1875, and supposed by you, as you state in your testimony to have been then held by him?

A. He had no authority from Mrs. Sweet or myself to make any other use of the new notes than to the cancellation of the old notes secured upon the premises in question.

Int 10. At the time of the transaction of September, 1876, referred to, or subsequent thereto, did he inform you, or your wife to your knowledge, that he was going to appropriate or had appropriated any of the notes of September 27, 1876, to his own use, or in any other manner than
275 the cancellation of the notes of January 1, 1875?

(Objected to by Mr. Elliot:)

A. Certainly not.

Cross-examination by Mr. C. A. Elliot.

X-int. 11. How long have you known the firm of Jackson Bro. & Co.?

A. I don't know that I know them now. I have known Mr. Wm. B. Jackson of the firm for a little over a year.

X-int. 12. Give us the month in which you first became acquainted with Mr. W. B. Jackson.

A. I have already stated time and time again in my former examination that it was some time in April or May, 1877.

X-int. 13. Where and when did you have the conversation with Charles T. Davis mentioned in reply to your 7th int.?

A. I called at Mr. Davis' office the very next morning after hearing of the visit of Jackson to the premises; this was shortly after the sale of July, 1877. I don't think I can state the month or the day of the month.
276 X-int. 14. Who informed you of Mr. Jackson's visit, and give us the information as conveyed to you?

A. My wife informed me that Chas. T. Davis had called at our house, the premises in controversy, in company with a tall, elderly gentleman with sandy complexion and red whiskers, describing fully Mr. Wm. B. Jackson. Mr. Davis informed the servant that he wished to show this gentleman a portion of the premises. Being exercised in mind in reference to this incident, I called upon Mr. Davis to ascertain what it all meant.

X-int. 15. When you then called on Mr. Davis he stated that his visit with Mr. Jackson to your house was with reference to some transaction with his father or mother's house next door. Now, is that true?

A. That is emphatically true.

X-int. 16. And that statement by Mr. Davis satisfied you, did it not?

A. Not by any means. I didn't believe a word of it; and I think I told him so at the time. I suspected at that time that he was try-
277 ing to go back on his agreement with me in reference to the purchase and sale of the premises in controversy, made in July, 1877; otherwise, he would have taken Mr. Jackson into his own people's house.

X-int. 17. How long did your conversation with Davis last, and what, beyond what you have already stated, did he say; and have you quoted his exact language?

A. I don't pretend to quote his exact language. I have merely stated the substance of his remarks. The conversation lasted but a few moments.

X-int. 18. What did you do after that conversation with respect to Mr. Jackson; did you call upon him and ascertain why he went to your house?

A. No, I did not.

X-int. 19. Did you not, after the sale by Davis & Elliot, trustees, endeavor to induce Jackson to accept the transfer of this property, and a piece of property on Capitol Hill in extinguishment of the notes involved in this suit.

(Objected to by Mr. Edwards.)

278 A. I did; upon the faithful promise of Chas. T. Davis to have the property conveyed to Messrs. Jackson, Bro. & Co., and with the understanding from the Jacksons, in case this was done, that I should have a reasonable amount of time to redeem the property.

X-int. 20. Don't you know that Charles T. Davis took Mr. Jackson to that house for the purpose of effecting this arrangement, and did not he (Davis) so inform you?

A. It is impossible for me to state what were the motive of Mr. C. T. Davis in taking Mr. Jackson to my house; but up to that time Mr. Davis had not suggested to me the proposition of deeding the premises to the Jacksons. This proposition was made by myself to Davis after the attachment for *am't*.

X-int. 21. Tell us when the agreement between yourself and Davis, which you have stated in relation to the purchase of your property at the trustee sale of July, 1877 was made, and whether it was in writing.

279 A. In answer to that question, I wish to give the whole history of the agreement from beginning to end, between Charles T. Davis and myself, with reference to the purchase by him for me of the premises in question. Does the counsel want the whole history?

Mr. ELLIOT. I want when that agreement, if any, was made, and whether it was in writing?

WITNESS. The agreement was entered into between C. T. Davis and myself, on the day of the sale of the premises, after a series of attempts on the part of Mr. C. T. Davis to have the sale withdrawn or postponed. The agreement was a verbal one. Fearing that it might not be effected, I asked one or two of my friends to be present and buy the property in for me in case Mr. Davis should fail to arrange to do so. Those friends were present at the sale and bid upon the property in my behalf; Mr. C. T. Davis noticing this, asked me to stop my friends from bidding—to permit him to buy it in. I complied with his request, and Mr. Davis caused the property to be bid in for my benefit.

280 (All after the word "fearing" objected to by Mr. Elliot.)

X-int. 22. Who were your friends who bid at this sale, and do you know if there was a bid from them previous to Blackwood bidding?

A. I could not state positively when Mr. Blackwood commenced bidding. My friends Messers. Wm. L. Argue and Wm. M. King, put in a number of bids; I did not notice any bidding on the part of Mr. Blackwood until after my friends bid.

X-int. 23. To what amount, in September, 1876, of secured paper matured and to mature did C. T. Davis hold against you?

A. I could not possibly tell, without reference to my books, the amount of secured paper unmatured held by Mr. Davis, but there was but one amount of matured secured paper held by him or by anyone for him.

X-int. 24. Will your books show to what extent you were indebted to Mr. C. T. Davis in September, 1876?

A. They will.

Mr. Elliot here calls upon the witness to produce his books
281 showing the account between and Charles T. Davis in September, 1876.

WITNESS. I have not upon my books a compl*ied* statement of account between Mr. C. T. Davis and myself at this time, but as I before stated I will be prepared to answer fully, x-int. No. 23, after refreshing my memory by reference to my books. I have no account in my books that would assist the counsel for Mr. Davs in obtaining light upon that question by a personal inspection.

X-int. 25. Have you brought the book or books that I have requested?

A. I have brought my book of bills payable and bills receivable.

X-int. 26. Does that book show how much of your paper in September, 1876, was in the hands of C. T. Davis, beyond the note of $1,833.33?

A. No, it does not; it shows the amount of my paper made payable and delivered to Mr. Davis that had been paid. It shows how many I delivered to him, excepting the secured notes—it does not show the secured notes; it shows only the unsecured notes.

282 X-int. 27. What is the total amount of those unsecured notes?

A. There were notes to the amount of $2,000 in 20 separate notes of $100 each, dated January 4, 1876.

X-int. 28. What secured notes did he hold at that time, if any?

A. I don't think he held any secured notes except one for $1,833.33.

X-int. 29. Do you know anything about notes secured on lot 79, in square 193?

A. I do, indeed.

X-int. 30. Were you liable on those notes in any way?

A. Certainly I was liable on them, and I saw that they were paid, and they were paid.

X-int. 31. By you?

A. They were paid by the sale of the premises upon which they were secured.

X-int. 32. And you owe nothing on those notes?

A. Not a penny.

Redirect by Mr. EDWARDS:

Int. 33. You have mentioned certain unsecured notes you had delivered to Davis prior to September, 1876; were there in fact any notes, se-
283 cured or unsecured, excepting the one for $1,833.33 of January, 1875, secured by the trust described in the proceedings, past due and unpaid?

A. At the date of the note to Williams, in September, 1876, there was not due from me a single dollar on account of any obligation to Charles T. Davis of any character whatever, excepting a note of $1,833.33 heretofore described.

Recross-examination by Mr. ELLIOT:

X-int. 34. You know that Davis had received $5,000 from Williams, from the proceeds of the Williams loan, didn't you?

(Objected to by Mr. Edwards.)

A. As a matter of fact I knew nothing about it.

X-int. 35. Did you know that the Williams loan had been consummated?

(Same objection.)

A. I only knew of the consummation of the loan from information received from Chas. T. Davis shortly after delivering to him of the deed of trust note.

EDWIN J. SWEET.

284 Sworn to and subscribed before me the 5th day of July, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

WILLIAM B. JACKSON, having been previously sworn in chief, and being now called in rebuttal, deposed as follows, in answer to questions by Mr. Edwards:

Int. 1. Do you recollect last fall going into the Sweet house on M street, the premises in controversy, in company with Charles T. Davis?

A. I do.

Int. 2. Davis testifies that on this occasion he told you that the Sweet property was incumbered by a mortgage of $5,000, and that he would have the property conveyed to you subject to incumbrance. Is this true?

A. If Davis told me that it is more than I recollect. I do not recollect it at all. When I went to the house it was with a view of his
285 satisfying me on my security, and at that time he said the house was valued at $10,000, and if I would give him $5,000 he would settle the Sweets notes in that arrangement. My reply was that I did not want the property, and preferred the matter to remain as it was, as we had the first mortgage.

Int. 3. Do I understand from your answer that the notes your firm then held, and described in this suit, and the $5,000 in money, was to have been the consideration for the conveyance of the property at this time as suggested to you by Charles T. Davis?

(Objected to by Mr. C. A. Elliot.)

A. I don't recollect especially what occurred about that; I only recollect that he wanted to convey this property for $5,000, and the matters we had against it.

Int. 4. What do you mean by "it?"

A. I mean the Sweet property.

Int. 5. What do you mean by the term "matters," you had against the Sweet property?

A. I mean generally, notes that we had against Mr. Davis; I might say notes that we obtained from Mr. Davis.

286 Int. 6. Do you mean the Sweet notes described in the bill in this suit?

(Objected to by Mr. Elliot.)

A. Yes, sir; I do.

Int. 7. Charles T. Davis further testifies that he called upon you before the negotiation of the Williams loan in September, 1876, and told you that he was going to change the loan, have the property released, or words to that effect. Is this true; and did you, in fact, have any knowledge, intimation, or suspicion that your security was to be released?

(Objected to by Mr. C. A. Elliot, as the question does not embody the language of the witness Davis.)

A. If it is true, it is more than I have the least recollection of; and as for Mr. Davis saying to me that he desired to have the release in order to make the change, it is entirely beyond my recollection. I had no knowledge, intimation, or suspicion that our security was to be released.

Int. 8. Did you, or any member of your firm, to your knowl-
287 edge, authorize Charles T. Davis to act for, or represent you or your firm, in any manner whatever in the matter of the attempted release of your security executed by him and Stickney?

(Objected to by Mr. Elliot.)

A. I did not; and I am quite as sure that neither one of our firm ever did, because Charles T. Davis and myself generally arranged matters between us.

Int. 9. Did you, or any member of your firm, to your knowledge, have any information, or even suspicion, that such a release of your security was about to be executed?

(Objected to by Mr. C. A. Elliot.)

A. I certainly had not, and don't believe our firm had.

Cross-examination by Mr. C. A. ELLIOT:

X-int. 10. At what time did you and Davis visit the Sweet property?

A. The date I cannot fix. It was some time last fall.

X-int. 11. It was about the month of July, was it not?

288 (Objected to by Mr. Edwards.)

A. I really cannot say. My recollection is that it was in the fall, and therefore could not have been in July.

X-int. 12. How did you come to go there?

A. Mr. Davis invited me to go there to look at the property.

X-int. 13. Is that all the invitation; did he designate any purpose that he wanted you to go there for?

A. To satisfy me that our security was ample, and that he could give us that or other security if we wanted it. My reply was then that all we wanted was the principal and the interest as it came due.

X-int. 14. Are you positive that that was the reason assigned by him, and that induced you to visit the property?

WITNESS. What reason?

X-int. (ELLIOT). I mean the reasons you have stated as to looking to your security.

A. The principal reason was to convey the property, as I understood it.

X-int. 15. By whom?

289 A. I knew none other than Mr. Davis in the transactions.

X-int. 16. Did you suppose it was Mr. Davis' property?

A. No, sir; I knew it was not. I knew it to be Mr. Sweet's property.

X-int. 17. How did you know?

A. I knew it by the papers in my possession—by the trust deed— as well as by the notes calling for the amount of money.

X-int. 18. Have you named all the papers by which you knew that fact?

(Objected to by Mr. Edwards.)

A. I think it is probable we had an abstract, but am not positive.

X-int. 19. Is that all?

(Same objection.)

A. I recollect of nothing else.

X-int. 20. Are you familiar with the squares & the lots in the city of Washington?

(Objected to by Mr. Edwards.)

A. I certainly am not.

X-int. 21. Do you know the location of sub-lot 49 in square 513?

(Objected to by Mr. Edwards as evidently a trap within which to catch the witness, & as entirely immaterial.)

290 A. I do not. If that trust refers to it of course I know where the lot is.

X-int. 22. How would you know?

(Same objection.)

A. I was informed so by Mr. Davis, and was upon the premises more than once.

X-int. 23. Then it is not true that you knew the location of the Sweet property from the papers in your possession, is it?

A. I knew it by the description of Mr. Davis, in the first place, and, as I said in my former testimony, I relied upon Mr. Davis, in a measure, in some of those matters; but after having lost confidence, all the papers in our possession were put in the hands of an examiner.

X-int. 24. Did not Mr. Davis and yourself visit the M st. property after having had several conversations as to the payment of the Sweet note by him; and did he not offer to deed to you the M st. property, which, as he stated, was encumbered to the extent of $5,000 and upwards, but was worth, in his judgment, in the neighborhood of $10,000, and some

291 property on Capitol Hill, occupied by Mr. Isaac Beers, in settlement of those notes, as well?

A. I must emphatically answer that, no. Mr. Davis told me of no incumbrance on the Sweet property that I recollect of. His value for the property was $12,000, and said to me if we would give $5,000 he would convey the property with the Sweet note. To that I objected. We then went to Capitol Hill and looked at a carpenter shop occupied by Mr. Beers, and he made some remark about it, but it did not amount to a snap of my fingers, and I paid no attention to it.

X-int. 25. Well, his offer was to transfer this property to you in settlement of the Sweet notes, was it not?

(Objected to because the witness has just stated that Davis wanted $5,000, and he would then convey the property in payment of the Sweet notes.)

A. I so understood it most distinctly.

X-int. 26. Who owned the Capitol Hill property.

(Objected to as immaterial.)

292 A. That I do not know. Mr. Davis claimed to control it.

X-int. 27. Did you not think it rather strange that Mr. Davis should convey this property on Capitol Hill in part settlement of the Sweet indebtedness?

(Same objection.)

A. If he offered to convey it it is more than I recollect of for the Sweet matters.

X-int. 28. Why was he to convey the Capitol Hill property, and if he was not to convey, why did you go there?

(Same objection.)

A. He carried me there simply to convince me that he had property ample to pay all he owed. He spoke of other property at the same time.

Adjourned to July 3, 1878, 11 a. m.

293 JULY 3, 1878—11 a. m.

Met pursuant to adjournment; present, Edwards & Barnard, counsel for pl'ffs, and C. A. Elliot, counsel for defendants Davis.

Whereupon the cross-examination of William B. Jackson resumed by Mr. C. A. ELLIOT:

X-int. 29. You were asked whether it was true that Mr. Chas. T. Davis called upon you before the negotiation of the Williams loan and told you he was going to change the loan or have the property released, or words to that effect, and you stated substantially that you had no recollection of it. You do not mean to say that the conversation did not occur, do you?

A. If it occur'ed it is more than I recollect. I have not the least recollection of anything of that kind.

X-int. 30. How is your recollection generally as to matters that
294 transpired 18 months or 2 years ago; clear or otherwise?

(Objected to by Mr. Edwards, unless confined to this particular transaction.)

A. I would say my recollection is clear generally. I have, however, known my recollection to be at fault.

X-int. 31. The conversation between yourself & Davis, as testified to by him, might have occur'ed, might it not?

(Objected to by Mr. Edwards.)

A. Such a thing is possible, but very unlikely.

X-int. 32. Had not Charles T. Davis, prior to September, 1876, been in the habit of attending to all matters in relation to paper obtained from your firm through him—I mean as to the interest and payment of principal?

(Question withdrawn.)

X-int. 33. Had you not authorized Davis to do as he pleased prior to September, 1876, with respect to the Sweet notes; it being understood between you that they were to be paid by him, and he could look
295 to Sweet and the property, as he should think best?

(Objected to by Mr. Edwards.)

A. Nothing of the kind was he ever authorized to do by me, or us; never. Mr. Davis did volunteer from time to time, to pay the interest, to which we agreed.

X-int. 34. And it was understood that he was to pay the principal, was it not?

(Objected to by Mr. Edwards, because the witness has already answered to the contrary.)

A. It was not so understood by me. If Mr. Davis brought the money to me at the maturity of the note or interest, of course I would take it. We had security and relied upon that.

Redirect by Mr. EDWARDS:

Int. 35. You were asked on X-examination the following: "Well, his offer was to transfer this property to you in settlement of the Sweet notes,

was it not?" to which you replied, "I so understood it, most dis-
296 tinctly." When you made this answer did you clearly understand the question; if not, what have you to say in answer to this question, as to what was Davis' offer to you in proposing a sale of the Sweet property?.

(Objected to by Mr. Elliot.)

A. I could not have fully understood it if I answered in that way; my intention was to have answered that Mr. Davis asked me to pay $5,000, and he would transfer the property or have it transferred for the $5,000 and the Sweet notes then in our possession.

Int. 36. Did you ever have any intimation or information, that Mr. Williams was going to loan any money on this Sweet property, and that for the purposes of consummating that loan your trust was to be released?

A. I did not the least.

Recross-examination by Mr. ELLIOT:

X-int. 37. How many times did you visit the Sweet property in company with Mr. Davis or anyone else?

297 (Objected to by Mr. Edwards.)

A. Once, I believe, only. It might have been twice, possibly, but I recollect only once.

WM. B. JACKSON.

Subscribed and sworn to before me this 3rd July, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

JAMES S. EDWARDS, being duly sworn, deposed as follows:

I reside in this city, and am of counsel for plaintiffs. After our firms were retained by the complainants in this suit, I received from the hands of William B. Jackson, a member of the firm of Jackson, Bro. & Co., complainants in this suit, the policy of insurance, Exhibit J. B. L., No. 1, filed May 3, 1878. The certificate of title by M. Ashford, dated January 14, 1875, marked Exhibit J. N. O. No. 10, filed April 11, 1878, both of which papers have been introduced in evidence in this cause; also
298 the original deed of trust from Mr. & Mrs. Sweet to Charles T. Davis & Wm. Stickney, dated January 1, 1875, and recorded on the 14th of the same month in liber 776, folio 48, of the land records of this District, which I now file and introduce in evidence in this case. (The same is filed and marked Exhibit J. N. O. No. 11.) These papers were all taken from a package of other real estate security held by complainants, which package was taken out of the safe of this firm at their place of business in my presence, since which I have held them until introduced in evidence in this cause. About the 1st of December last the defendant Charles T. Davis called at the office of our firm to settle this suit and other matters which the complainants might possibly lose through his wrongful acts in releasing property which they held as security without their authority. At this interview Davis stated that he was sor'y for the
299 condition of affairs, and expressly stated that he desired to assume the responsibility of the transactions in the matter of the release by him and Stickney mentioned in the proceedings; that he expected when this release was executed no trouble would grow out of it, for he fully ex-

pected to provide for the notes held by the complainants as they matured, but his creditors had pushed him so, that when the note, maturing in January, 1877, became due, he could not take care of it. I told him the only terms of settlement that would be considered, so far as this case was concerned, was payment of the notes, or undoubted and satisfactory security. He desired to turn over certain notes he had with him, purporting to be secured and to convey his equitable interests in any property he owned in this District. I told him it was useless to talk about it, and refused and further stated that he was in honor & duty bound to protect the complainants in every possible way that lay in his power; that he knew the other
300 two notes secured by the trust of January, 1875, which had been released, were not due, and suit at law could not be brought upon them; that suits at law were pending against him; and that he was being sued by his creditors, and the least he could do would be to make a note covering the aggregate of the securities released, the note to be at short time and secured by a deed of trust on all his property or interest in property in this District; and from any proceeds that might be realized from sales under this trust, credit should be given by the complainants on the notes held by them which had been released, or were jeopardized, This he freely, willingly, and unqualifiedly agreed to; and, at his request, on this same day of the interview I prepared a note for $12,000 to the order of his father, Augustus Davis, at 30 days, payable at the Bank of Washington, where the complainants kept their account, also a deed of trust
301 to be executed by Davis & his wife on all his real estate or interest therein in this District to secure it; Messers. George W. Phillips and Charles C. Glover were the trustees selected by Davis & myself under this deed. I also prepared on the same day, at Davis' own suggestion, a chattel deed of trust to secure the same note and a' additional security on certain gas fixtures, ranges, and furnaces in certain houses on L street north, between 13th & 14th streets west, in this city, which Davis claimed he owned at this time. Davis was further informed that after executing and returning to me these papers in due form I would give him a receipt on behalf of this firm for the note, stating, for his protection, for what purpose it was to be held by the complainants. It was further expressly understood, and Davis was so advised before the preparation of these papers that there would be no stay of proceedings in this or any other suit then pending against him, or to in any manner preclude the com-
302 plainants from instituting proceedings against any other property or persons to reinstate other trusts which Davis had fraudulently released. After the papers mentioned were prepared Davis took them away with him to execute, saying, as he left, that he would submit them to Mr. R. K. Elliot for his opinion as to their form, and would return them that afternoon or the next day or as soon as he could get them executed. The next day or a couple of days after I called at the office of R. K. Elliot, esq., and he stated that the papers were there, pointing to them on the desk, but that he had not had time to examine them. Davis never returned these papers, and to my amazement I learned about a week after that the two trusts I had prepared had been recorded. The record of these trusts will be found in liber No. 871, folios 330 & 328, of this land records for this District.

I have read the testimony of Charles T. Davis in relation to this

303 interview and in so far as it conflicts with what I have stated, is untrue.

(Mr. C. A. Elliot objects to this deposition.)

Cross-examination by Mr. C. A. ELLIOT:

X-int. 1. Of course you don't know where or from whom or when complainants obtained those papers you received from them?

A. Of my own knowledge I do not, but from the testimony in this cause I do.

X-int. 2. Were not these papers in the hands of Mr. Morsell for some time?

A. Not to my knowledge. They have not been out of my custody since I received them.

X-int. 3. Were they not put in your hands to ascertain whether there was security for the Sweet notes?

A. I was consulted by the complainants for an opinion as to their rights under the trusts which I was informed had been fraudulently released by the defendant, Charles T. Davis, and for the advice of our firm in the premises.

304 X-int. 4. From whom and when did you first derive information as to the release?

A. The conversation in relation to these matters was with Wm. B. Jackson in his office at his store, having called them by previous requests. It was from him and at the first interview I had with him on the subject that he told me of the predicament the firm was placed in through these fraudulent and unauthorized releases. I do not think it was more than 2 or 3 weeks before this suit was instituted.

X-int. 5. Had not E. J. Sweet, prior to your interview with Jackson, communicated that fact to you?

A. No, sir.

X-int. 6. Did not Chas. T. Davis, in his interview with you, referred to in your testimony-in-chief, first make the proposition to you of the conveyance of his interest in the real and personal property?

A. He first suggested or desired, as I have before stated, that we take certain real-estate notes, and to convey his equitable interests in

305 property in the District.

X-int. 7. On what day did this interview occur?

A. I cannot be positive, but my best recollection is that it was on a Monday or the early part of the week the papers were recorded.

X-int. 8. Aside from the papers, can you tell in what month this conversation occur'ed?

A. Certainly. I charged my memory particularly with the circumstance, for Davis' apparant candor and desire to do what was right left an impression on my mind. I know it was in the early part of the month of December last. I think I dated the paper a day or two before this interview took place. Davis' interposition on behalf of his aged father, who had signed the release as the holder of note or party secured, and to shield him in the transaction, is fresh in my memory.

X-int. 9. Give us then the day of the month, of the week, and the hour of the day.

306 A. My best recollection is that this interview took place on the

Monday preceding the recording of the two trusts that I had prepared. Davis came to the office early in the morning, between 9 & 10, and it was nearly if not quite 2 o'clock before I completed them, and he took them away. I will not be positive, but I think Davis prepared the schedule of personal effects attached to the deed of trust himself.

X-int. 10. Did you make any note or memorandum of your interview with Davis as to what he agreed to do respecting his indebtedness to the complainant?

A. I have not stated the term "indebtedness" as it might be construed to mean by your question. I will say that I did not take any memorandum or notes in writing of what Davis said to me nor I to him on this occasion.

X-int. 11. Did you have a conversation with Davis on any other subject that day?

A. No, sir.

307 X-int. 12. You prepared the papers—the trusts & the note for $12,000, and gave them to Charles T. Davis, at a later hour in the day than the interview, did you not?

A. Davis was in our office nearly all, if not all, the time I was preparing these papers, and assisted me in every manner possible, for he seemed quite anxious that they should be executed and delivered for the purposes intended as soon as possible.

X-int. 13. Don't you know that the failure of Davis to execute those papers was on account of a difference between you and him as to the purpose, he claiming that the note was to be delivered in settlement of his indebtedness to the complainants, and not as additional security, as you claim?

A. No, sir; the object of the papers and the purposes of their execution and contemplated delivery was clearly understood and settled before I took hold of my pen to prepare them, and when Davis left the office there was no difference whatever. His only object, as he stated in submit-

308 ting them to Mr. R. K. Elliot, was simply as to their form. Davis' "indebtedness," as counsel states it, was not of a direct character. He was endorser on many of the notes that he had fraudulently released. The principal object in the preparation and execution of the papers was to secure the Jacksons in so far as he could in addition to what they had, in case they might possibly be unsuccessful in the litigation then in progress, and which might thereafter be instituted to reinstate their securities. Very little value was, in fact, attached to the security of the two trusts which I prepared, as I have stated.

(Counsel of defendants Davis objects to statement of counsel while acting as witness, and to so much of the foregoing answer as is not responsive.)

X-int. 14. Do you mean to testify as to what the understanding of Davis was as to the purport of this interview?

A. Yes, sir; as expressed by him, and from the conversations between him and I at that time.

X-int. 15. Now, give us what Mr. Davis said, and all he said, and in his own language.

309 A. I have stated this conversation as plainly and clearly as I am able to, and repeat what I have previously stated.

X-int. 16. Can you give the language used by Mr. Davis at this interview or subsequently? I mean as to the reason for the preparation of these papers and the release of the Stickney & Davis trust.

A. There was but one interview, as I have before stated. The conversation that occur'ed I have already stated. I will add that Davis never intimated or claimed that this release was authorized, but at this interview admitted in direct language the wrongful execution of the release.

X-int. 17. Now give us his language.

A. I have previously stated the substance and in as near language as a reasonable man can be expected to testify on a matter fresh in his recollection.

X-int. 18. Is it not a fact that you are merely testifying as to what you understood to be the purport of the interview and to what you thought Davis understood without being able to repeat the language used by Davis at this interview as to the papers and release?

310 A. No, sir. I have stated what was said & what occurred. I do not pretend as a witness to give understandings except what is based on statements and acts.

X-int. 19. Are you able to give the language as used by Davis except as above stated?

A. I have endeavored to tell you what was said and what occur'ed. I can give no other answer. You must form your own conclusions.

JAS. S. EDWARDS.

Sworn to and subscribed before me the 5th day of July, 1878.

JOHN N. OLIVER,
Examiner in Chancery.

JULY 5, 1878.

Testimony in rebuttal here closed.

JOHN N. OLIVER,
Examiner.

311 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John N. Oliver, examiner in chancery, do hereby certify that, in pursuance of notice, the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the solicitors for the parties who were then and there attending; the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

JOHN N. OLIVER,
Examiner in Chancery.

312 *Exhibits to compl'ts' depositions.—Filed March 2d, 1878.*—J. N. OLIVER, *Ex'r.*

EXHIBIT J. N. O., No. 1.

JACKSON ET AL.
vs.
BLACKWOOD ET AL.

C. T. Davis and R. K. Elliott, trustees in % with E. S. Blackwood, purchase of lot 49 of A. Davis' subdivision of square 513.

July 17, 1877. To gross amount of purchase-money	$6,325	00
Cash payment	1,325	
Note, @ 4 years	$5,000	
Aug. 3, 1877. Cr. as follows:		
By cash	350	
Auctioneer & advertising	236	57
Taxes for 1876	114	60*
Interest on same	12	50*
Insurance paid	35	*
Trustee's commission to C. T. Davis, being one-half	158	12*
One-half on second-mortgage notes to C. T. Davis	97	35
	$1,004	14
Aug. 22, 1877. Cash	320	86
	1,325	

313 EXHIBIT J. N. O., No. 2.—*Filed Mar. 2d, '78.*

This indenture, made this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and seventy-six, between Addie M. Sweet and Edwin J. Sweet, her husband, of the city of Washington, District of Columbia, of the first part, and Charles T. Davis and Robert K. Elliot of the said city and District, trustees, of the second part.

Whereas the said Addie M. Sweet stands justly indebted unto Samuel T. Williams in the full and just sum of five thousand dollars ($5,000), for which amount she hath made and passed to the said Samuel T. Williams her certain promissory note, bearing even date herewith, and payable to the order of said Samuel T. Williams at the German-American Savings Bank, in four (4) years after date, for the sum of five thousand dollars ($5,000), with interest at the rate of nine (9) per cent. per annum, until , payable semi-annually:

And whereas the said parties of the first part are all desirous of securing the full and punctual payment of said note and interest as the same mature, they therefore executed these presents:

*Vouchers required before final settlement.

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part, at and before
314 the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plan of said city as lot numbered forty-nine (49) of Augustus Davis' subdivision of original lot numbered eight (8), in square numbered five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, said lot forty-nine (49) having a front on M street north of twenty feet (20) and two inches (2) by a depth of one hundred and eight (108) feet eight and one-half ($8\frac{1}{2}$) inches, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

315 To have and hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared; that is, in trust to permit the said parties of the first part, their heirs, or assigns to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for her and their sole use and benefit until default be made in the payment of said note, or any interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same.

And upon full payment of all of said note and interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Addie M. Sweet, her heirs or assigns, at her or their cost.

And upon this further trust, that upon default being made in the payment of the said note, or any interest due thereon, or any proper
316 cost, charge, commission, half commission, or expense in and about the same, then, and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement, as the said parties of the second part, their heirs & assigns, the survivor, his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of

the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Addie M. Sweet, her executors, administrators, or assigns.

And the said Addie M. Sweet doth hereby agree, at her own cost, during all the time wherein any part of the matter hereby secured
317 shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due, and to keep the said improvements insured against fire in the name and to the satisfaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured whether due or not; and that upon any default or neglect to so pay said taxes and assessments, or to so insure, any party secured hereby may pay said taxes and assessments, or may have said improvements insured, and the expense thereof shall be a charge hereby secured and bear like interest as the matter secured.

And it is expressly provided that if said property shall be advertised for sale under the provisions of this deed, and not sold, then the said trustee shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ADDIE M. SWEET. [SEAL.]
EDWIN J. SWEET. [SEAL.]

318 Signed, sealed, and delivered in the presence of—
M. P. CALLAN.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. P. Callan, a notary public in and for the said county in said District, do hereby certify that Addie M. Sweet and Edwin J. Sweet, her husband, of the city of Washington, District of Columbia, parties to a certain deed bearing date on the twenty-seventh day of September, A. D. 1876, and hereto annexed, personally appeared before me in said District, the said Addie M. Sweet and Edwin J. Sweet, her husband, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Addie M. Sweet being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my notarial seal this 27th day of September, A. D. 1876.

MICH. P. CALLAN, [SEAL.]
Notary Public.

319 *Certificate of the record of deed.*

Deed of trust, Addie M. Sweet et vir, to Chas. T. Davis & Robert K. Elliot, trustees.

Received for record on the 28 day of Sep., A. D. 1876, at 11 o'clock m., and recorded in liber No. 834, folio 20, one of the land records for County, in the District of Columbia, and examined by

S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Dep.*

Default having been made in payment of interest, the trustees will proceed to execute the trust.

SAM'L T. WILLIAMS.

APRIL 19, '77.

320 EXHIBIT J. N. O., No. 3.—*Filed M'ch* 7, 1878.—J. N. OLIVER, *Examiner.*

Davis and Elliott, tr's.

'77.			'77.		
July 17	To charges, R. E. B	164 57	July 17	By cash, 74	63
Aug. 1	" draft not paid, 89	83 33	" "	" draft, 74	83 33
" 3	" cash, 90	350	25	" check, 80	103 67
" 3	" adv't'g., R. E. B	39	Aug. 3	" cash, 90	350
				" ½	35 17
				" balance	1 73
		636 90			636 90
	To balance	1 73		By allowance	1 73
Aug. 22	To adv't'g	33 00	Sept. 11	By cash, 118	33 00

The above is an exact copy.

H. L. ADAMS,
Bookkeeper.

321 EXHIBIT J. N. O., No. 4.—*Filed M'ch* 4, '78.—J. N. OLIVER, *Ex.*

1876		Cr.	Dr.
Jan. 3	Culver & net	104 05	
"	By c'ks 8.00, 1.95		9 95
4	840, 2,000	2,840 00	
"	C'ks 25.00, 1.95		26 95
5			1,907 88

The within is a true copy of the account of Chas. T. Davis, or in the Metropolis Savings Bank of the District of Columbia, for the period from the 1st to 5th January, 1876.

J. A. RUFF, *Cashier.*

322 EXHIBIT J. N. O., No. 5.—*Filed M'ch* 29, 1878.—J. N. OLIVER, *Examiner.*

Deposit in office of Riggs & Co., Washington, D. C., Sept. 28, 1876.

	Dollars.	Cts
Treasury and bank notes:		
Currency, checks as follows:.....	5,000	
	150	
	5,150	

CHARLES T. DAVIS.

323 EXHIBIT J. N. O., No. 6.—J. N. OLIVER, *Ex'r.*

No. 799.] WASHINGTON, D. C., *Jan.* 4, 1876.

German-American Savings Bank pay to Charles T. Davis, or order, three hundred and forty dollars, and charge to the account of deposit book No. 2049.

$340.00] E. J. SWEET.

(On margin:) Edwin J. Sweet, real estate and note broker, 511 Seventh street.

(Stamped across the face:) German-American Savings Bank. Paid. Jan. 5, 1876. Washington, D. C.

(Endorsed:) CHARLES T. DAVIS.

(Stamp:) Metropolis Savings Bank. Jan. 7, 1878. D. C.

324 EXHIBIT J. N. O., No. 7.—*Filed M'ch* 30, 1878.—J. N. OLIVER, *Examiner.*

In re. The sale of sub-lot 49, square 513, by Davis & Elliot, trustees.

Received Aug. 23, 1877, of Chas. T. Davis and R. K. Elliot, trus'ees, the sum of one hundred and sixteen $\frac{85}{100}$, being one-half of the surplus proceeds of the above sale, applied by said trustees to the notes secured by deed of trust from Addie M. Sweet to Chas. T. Davis, recorded in liber. 828, folio 458, of the land records of the District of Columbia, of which notes three are held by the Citizens' National Bank.

$116.85.]

JNO. A. J. CRESWELL,
Pres't of Citizens' Nat'l Bank.

Received from Chas. T. Davis & R. K. Elliot, trustees, the sum of seventy-seven $\frac{74}{100}$ dollars, being proceeds of *from* the above sale, creditable to 2nd mort. notes held by Mr. Chas. T. Davis.

Aug. 23, 1877.

325 EXHIBIT J. N. O., No. 9½.—*Filed Ap'l.* 8, '78.—J. N. OLIVER.

$5,000.00.] WASHINGTON, D. C., *Dec.* 8, 1874.

Seventy days after date I promise to pay to the order of Rob't Clarkson, C. C. Martin, & J. C. Walker, the sum of five thousand dollars, value

received, with interest at 10 per cent. until paid, payable at the National Bank of the Republic.

Due.

Erased: [AUGUSTUS DAVIS.]

(Endorsed:)

Erased: { ROBERT CLARKSON. / C. C. MARTIN. / J. C. WALKER. / JACKSON, BRO. & CO. }

326 EXHIBIT J. N. O., No. 8.—*Filed M'ch 30th*, 1878.—J. N. OLIVER, *Examiner*.

WASHINGTON, D. C., *Aug.* 23, '77.

Rec'd of R. K. Elliot, trustee, the sum of thirty-five dollars ($35), for insurance on No. 437 M st. NW., also twelve dollars and fifty cents ($12.50) interest on taxes for the year 1876, on lot 49, sq. 513, paid by me Oct. 3, 1876.

CHARLES T. DAVIS.

327 EXHIBIT J. N. O., No. 10.—*Filed April* 11, 1878.—JOHN N. OLIVER, *Examiner*.

Addie M. Sweet & vir to Charles T. Davis & Wm. Stickney, trustees. Deed of trust Jan. 1, 1875. Recorded Jan. 14, 1875. Conveys lot 49 of Aug. Davis' sub. of lot 8, square 513.

Secure payment to Augustus Davis, $8,000, deferred purchase-money in 4 notes—three for $1,833.33 each, in one, two, & three years, and one for $2,500 in 3 years, all bearing interest from date at 8 % semi-annually.

The title to sub-lot 49, sq. 513, is good in Addie M. Sweet, and the above is the first lien or encumbrance upon the lot, and the said trust is duly executed & recorded. Taxes are all paid.

M. ASHFORD.

JAN. 14, 1875.

328 EXHIBIT J. N. O., No. 11.—JOHN N. OLIVER, *Examiner*.

This indenture, made this first day of January, in the year of our Lord one thousand eight hundred and seventy-five, between Addie M. Sweet and Edwin J. Sweet, her husband, of the city of Washington, in the District of Columbia, of the first part, and Charles T. Davis and William Stickney, of the said city and District, of the second part.

Whereas the said Addie M. Sweet and Edwin J. Sweet stand justly indebted unto Augustus Davis in the full sum eight thousand dollars ($8,000), deferred payments of purchase-money for the hereinafter described property, for which amount they have made and delivered to said Augustus Davis their four certain promissory notes, dated January 1st, 1875, and payable to the order of said Augustus Davis, the first three for the sum of one thousand eight hundred and thirty-three dollars and thirty-three cents ($1,833.33) each, payable respectively, in one (1), two (2), and three (3) years after date, and the fourth for the sum of two thousand five hundred

dollars ($2,500) payable in three (3) years after date, all with interest at the rate of eight (8) per cent. per annum until paid, payable semi-annually;

And whereas the said parties of the first part are desirous of securing the full and punctual payment of said notes as the same mature and all interest, costs, and charges which may properly accrue thereon;

329 Now, therefore, this innedture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, all that certain piece of parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished upon the public plats and plan of said city as lot numbered forty-nine (49) of Augustus Davis' subdivision of original lot numbered eight (8), in square numbered five hundred and thirteen (513), as the same is recorded in the surveyor's office of the District of Columbia, in liber H. D. C., folio 223.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertain-

330 ing, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said described real estate and premises.

To have and hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, the survivor of them, his heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared; that is, in trust to permit the said parties of the first part, their heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for her or their sole use and benefit, until default be made in the payment of said notes or any one of them, or any proper cost, charge, commission, half-commission, or expense in and about the same.

And upon full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half-commissions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Addie M. Sweet, her heirs or assigns, at her or their cost.

331 And upon this further trust, that upon default being made in the payment of the said notes, or any one or more of them, or the interest thereon, or any proper cost, charge, commission, half-commission, or expense in and about the same, then, and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said parties of the second part, the survivor, his heirs, or the trustee acting in the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money, and of the proceeds of said

sale or sales, first to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Addie M. Sweet, her executors, administrators or assigns.

332 And the said parties of the first part do hereby agree, at their own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against fire in the name and to the satisfaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matters hereby secured, whether due or not, and that upon any default or neglect to so insure, any party secured hereby may have said improvements insured, and the expense thereof shall be a charge hereby secured, and bear like interest as the matter secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

ADDIE M. SWEET. [SEAL.]
EDWIN J. SWEET. [SEAL.]

Signed, sealed, and delivered in the presence of—
M. M. ROHRER.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, M. M. Rohrer, a notary public in and for the said county in
333 said District, do hereby certify that Edwin J. Sweet and Addie M. Sweet, his wife, parties to a certain deed bearing date on the first day of January, A. D. 1875, and hereto annexed, personally appeared before me in said county, the said Edwin J. Sweet and Addie M. Sweet being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Addie M. Sweet being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my notarial seal this twelfth (12) day of January, A. D. 1875.

M. M. ROHRER, [SEAL.]
Notary Public.

334 *Certificate of the record of deed.*

Deed of trust. Addie M. Sweet et vir to Chas. T. and Wm. Stickney.

Received for record on the 14 day of January, A. D. 1875, at 2.10 o'clock p. m., and recorded in liber No. 776, folio 48, one of the land records for Washington County, in the District of Columbia, and examined by—

S. WOLF, *Recorder*,
By G. F. SCHAYER.

DEFENDANT'S TESTIMONY.

335 *Depositions behalf def't C. T. Davis.—Filed Oct.* 30, 1878.

In the supreme court of the District of Columbia.

JACKSON ET AL. *vs.* BLACKWOOD ET AL. } Equity. No. 5950. Doc. 17.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses begun and held on the 2nd day of May, A. D. 1878, and continued from time to time until the 28th day of June, A. D. 1878, when the within depositions were taken, I, Irwin B. Linton, an examiner in chancery, did cause to be personally present at 501 D st., NW., in the city of Washington, in said District, the within-named Augustus Davis, Charles T. Davis, Rawleigh W. Downman, Joseph T. Coldwell, Charles W. Blozey, and Otis Bigelow, to testify on the part and behalf of the defendant Charles T. Davis in the above-entitled cause.

And I do hereby certify that, in pursuance of agreement, of the annexed depositions were taken down and by me reduced to writing in the presence of and from the statements of the several witnesses at the
336, 337 time and place herein designated, and by them subscribed in my presence, the witnesses having been by me first duly sworn to tell the truth, the whole truth and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause, or in any manner interested therein.

IRWIN B. LINTON,
Examiner in Chancery.

338 *Deposition of Aug. Davis, behalf def't Davis.*

In the supreme court of the District of Columbia.

JACKSON ET AL. *vs.* BLACKWOOD ET AL. } Equity. No. 5950. Doc. 17.

Depositions on behalf of the defendants Davis, taken before Irwin B. Linton, examiner in chancery.

Met pursuant to agreement of counsel at Messrs. Edwards & Barnard's office, No. 503 D street, Washington, D. C., May 2d, 1878, at one o'clock p. m.

Present, J. S. Edwards, esq., of counsel for complainants, and Charles A. Elliott, esq., counsel for defendants Davis, and D. O'C. Callaghan, esq., for defendants Sweet.

AUGUSTUS DAVIS, one of the defendants to this suit, being first duly sworn, deposes, testifies, and says as follows:

Examined by Mr. ELLIOT:

Q. Where do you reside?

A. No. 439 M street northwest.
Q. Are you one of the defendants in this suit?
A. Yes.
Q. Please examine exhibit marked J. N. O., No. 9½, filed April 14th, 1878, and say by whom that note was drawn?
339 A. That note was drawn by me. That is my signature.
Q. Was that note *note* discounted? If so, by whom?
A. Messrs. Jackson, Brother & Company discounted it.
Q. They are the complainants in this suit?
A. Yes, sir.
Q. How was that note secured; if at all?
A. By the endorsement of Robert Clarkson, C. C. Martin, and J. C. Walker.
Q. Was it secured by deed of trust on real estate or collateral security?
A. The simple endorsement of my partners trading under the firm of Davis, Clarkson & Co., at that time.
Q. How much was received by you for this note from the complainants?
A. I think he loaned me ($5,000) five thousand dollars on it, bearing ten per cent. interest. It seems to me but I cannot be positive; I think five thousand dollars.
Q. Was that note paid by you at maturity?
A. No, sir; it was not paid by me.
Q. How was it settled, if settled at all?
A. Well, my son, Charles T. Davis turned the note over to me.
Q. Did you know of your own knowledge, how he obtained it from complainant?
A. Not of my own knowledge.
Q. How long have you been acquainted with these complainants?
340 A. Jackson & Brother?
Q. Yes, sir.
A. I have known Mr. Jackson for some years. I have no intimate acquaintance with him, though.

(All this testimony objected to as incompetent by Mr. Edwards.)

Cross-examined by Mr. EDWARDS:

X Q. 1. You have been asked "what value, if any, you received from Jackson, Brother & Co. as the consideration for this note;" do you not know as a fact that Jackson, Brother & Co. paid you, by check, the sum of five thousand dollars for that piece of paper?
A. I say I think they gave me the face value of the note. That is my impression.
X Q. 2. Can you say that they did not pay you the full sum of five thousand dollars as the consideration for receiving from you that piece of paper?
A. Well, I think they did; I am not positive about it, they may have charged a commission on it; what I know is, their check will show what they paid; I am not certain now. On my book I put the proceeds as five thousand dollars.
X Q. 3. Question repeated.
341 A. Well, I cannot say that they did not positively; my impression is that they gave me a check for pretty much the full amount.

I know all I have got to go by is my book in my partnership account, and I put the proceeds of this note, discounted by Jackson as five thousand dollars. I gave my partners the benefit of the proceeds of the note.

X Q. 4. Will you say as a fact that there was any charge whatever made by Jackson, Brother & Co. as a commission in the discount of this note?

A. I cannot say positively; it has slipped my mind.

X Q. 5. You are one of the defendants in this suit, are you not?

A. Yes, sir; I judge so.

X Q. 6. You are the father of the defendant Charles T. Davis, are you not?

A. Yes, sir.

X Q. 7. Were you not at the time this note was discounted doing business with your son, Charles T. Davis, under the firm name of A. Davis & Son?

(Objected to Mr. Elliot.)

A. I was at that time, in 1874.

X Q. 8. You are, are you not, the payee of the notes given by Mr.
342 and Mrs. Sweet, secured by the trust of January 1st, 1875, which was a part of the consideration for the sale to Mrs. Sweet of lot 49 in square 513 in this city, are you not?

(Objected to by Mr. Elliot.)

A. (Witness examining a paper handed him by counsel.) Yes, sir; they were made payable to my order.

X Q. 9. After the notes were executed you endorsed them, did you not?

(Objected to by Mr. Elliot.)

A. I endorsed the notes.

X Q. 10. After you endorsed them what did you do with them?

(Objected to by Mr. Elliot, who instructs the witness that he is not bound to answer any question of this nature, as the questions are upon a subject in nowise responsive to the direct examination.

Whereupon counsel for the complainants states that he expects to connect the testimony he is attempting to establish in thus cross-examining witness with what he has stated in his examination-in-chief.)

Whereupon the examiner asks the witness if he refuses to answer, and witness replied that he declined, under the instruction of counsel, to answer.

343 Thereupon counsel for complainants requests the examiner to certify the question to the court for its determination, and pending the result the further examination of the witness be suspended, which the examiner accordingly does, and appends his signature in evidence thereof.

IRWIN B. LINTON,
Examiner in Chancery.

Owing to the illness of the above witness, Augustus Davis, further examination of him as a witness is waived.

IRWIN B. LINTON,
Examiner in Chancery.

344 CHARLES T. DAVIS, one of the defendants in this cause, sworn and examined:

By Mr. ELLIOT:

Q. Where do you reside?

A. Washington City, in the District of Columbia.

Q. Are you one of the defendants in this suit?

A. I am.

Q. Did you ever have in your possession the promissory notes of the defendants Sweet, described in the 3rd paragraph of the bill of complaint?

A. Yes, sir.

Q. How and when did they leave your possession, if at all?

A. The first three notes, for ($1,833.33) eighteen hundred and thirty-three dollars and thirty-three cents, left my possession some time between the 16th and 20th of February, 1875.

Q. To whom were they delivered, and what consideration was paid therefor?

A. They were exchanged with the firm of Jackson, Brother & Co. for a note, drawn by my father, for five thousand dollars, dated December 8th, 1874, and payable to the order of Robert Clarkson et al. (here marked Exhibit J. N. O., No. 9½).

Q. To which member of the firm of Jackson, Brother & Co.?

345 A. William B. Jackson.

Q. What became of the *of the* fourth note mentioned in said paragraph for the sum of twenty-five hundred dollars?

A. I delivered that to William B. Jackson within six months after its date.

Q. Was there any consideration for that delivery, and if so, what?

A. To the best of my recollection the note was delivered to him twice within the six months.

Q. Was there any consideration for those deliveries; if so, what?

A. The first consideration was, I think, an exchange and surrender to me of another note.

Q. Were those notes or any of them delivered to Jackson, Brother & Co. for money and 3.65 bonds, or for money or bonds alone?

A. No. They paid me a small difference, by check, on Bank of Washington, I think, between the five thousand dollar note mentioned by you and the accrued interest thereon, and the three notes for $1,833.33 each, which last notes they discounted, that is, took some interest off the face, brought them pretty near together.

Q. What, if anything, was delivered to Mr. Jackson at the time you delivered the three notes of $1,833.33, which as you have stated, or

346 at the time you delivered the twenty-five hundred dollar note, subsequently?

A. Nothing was delivered but the notes.

Q. What was said, if anything, between yourself and Mr. William B. Jackson at the time of the delivery of these notes?

WITNESS. Would it be improper for me to go back of that time?

Q. I have asked for a specific time?

A. William B. Jackson asked me if the notes were good. I told him they were.

Q. What, if anything, was said by you as to the notes being secured on real estate?

(Objected to by Mr. Edwards as leading.)

A. Nothing was said about real estate security.

Q. Did Mr. Jackson at the time he received the notes know that they were secured upon the real estate involved in this suit, or upon any real estate?

A. He did not know from me; I never told him; that is at the time of the delivery of the notes.

Q. Were there passed by you to him, with these notes, a certificate of title marked here Exhibit J. N. O., No. 10, and the deed of trust from Addie M. Sweet and husband of January the 1st, 1875, and the
347 policy of insurance of house No. 437 M street northwest?

A. No; not at the time of the delivery of the notes.

Q. In whose possession were they at that time?

A. In my possession.

Q. How long have you known the complainants?

A. I have known William B. Jackson ever since I was a child of about twelve years of age—that is, about twelve years ago.

Q. What had been your relations with them up to the time the Sweet notes were delivered to you?

A. I had requested them to take the loan—that is I had requested them to loan the five thousand dollars, evidenced by the note of December 8th, 1874, to my father.

Q. What had been your relations in general with them prior to that time, intimate or otherwise?

A. Our relations were not intimate. He was a man that I always liked, and had always seemed to favor me whenever he could.

Q. Had the complainants discounted the paper for you and your father and the firm of A. Davis & Son prior to the delivery of the Sweet notes and the discount of this five thousand dollar note?

(Objected to by Mr. Edwards.)

348 A. No; they never discounted anything for me. Well, I will go on now. I told them that if they would make the advance of five thousand dollars to A. Davis, Clarkson & Co., I would see that they were paid.

Q. What had been your business relations with the firm?

A. I think that was my first transaction with them, that is, where I was directly interested.

Q. How as to transactions in which you were indirectly interested, if there were such transactions?

(Objected to by Mr. Edwards.)

A. I used to go to them in 1867–'68 to deliver messages or get money from them for J. P. Bartholow; that is, I was an errand boy in the store of Bartholow.

Q. Did you, or did you not, take notes to Jackson, Brother & Co. for discount, in which transactions you had no direct interest?

(Objected to because the witness has already answered this question.)

A. That was what I meant when alluding to Bartholow, by "indirect." Now let me state right here, before we go any further, the notes in
349 question for $1,833.33 were delivered by me to William B. Jack-

son in lieu of the five thousand dollar note mentioned, and all the interest I had in that transaction was to save my father's credit with them I did not want—shall I go on and just explain the whole?

COUNSEL. I prefer to question you respecting this case, and you may make the explanations afterwards; however, if you desire to give a statement now of all this case in your own way, and without questioning, I certainly have no objection.

WITNESS. I do not desire to do so. If we are going to have an examination I want it by question and answer.

Q. Why, and at whose request was the loan of five thousand dollars by the defendant Williams and secured by the deed of trust set out in the 6th paragraph of the bill, made?

A. It was negotiated upon the request of Edwin J. Sweet.

Q. In what capacity did you act in the transaction?

A. I acted as the agent of Sweet, and in the interest of A. Davis & Son.

Q. How did you become the agent of Sweet?

350 A. When the first note of $1,833.33 came due the 1st and 4th of January, 1876, Sweet came to me and said that the note was due at the Bank of Washington, and handed me the notice which they had sent him of the note and stated that he was unable to pay it. I told him that he knew the consequences of a default, and that I should advertise the property if the note was not paid. We had some conversation further, which I do not remember, and he came back again with a notice of the note in his hand and stated that he had been to the Bank of Washington and had seen the note, and saw that I was not the holder, and requested me to see Jackson, Brother & Co., and get them to extend it for one week. I saw Mr. Jackson and requested him to extend the note; he stated that he had taken the notes upon my representation that they would be promptly paid, and said very kindly but firmly that he expected if Sweet did not pay the note for me to take it up immediately. I then went to the Metropolis Savings Bank and drew a check for the amount of the note and accrued interest, had it certified, went into the Bank of Washington

351 and took up the note; I then went to the office feeling quite angry towards Sweet, as he had always stated before the notes came due that they would be met promptly, and I did not want to lay out the amount of money which it required to pay the note. He stated if I would hold the matter over for a week that he would make arrangements to pay it, and, after a great deal of conversation, I agreed to hold it for him for one week. At the end of that time he came in and asked me as a friend to extend the note for a further period of thirty (30) days, and offered me a consideration for doing it. At this time I did not need the money so much, and, as a friendly act to Sweet, I extended it for the thirty days. At the end of thirty days he came to me again, stating that he had been disappointed in obtaining money, and stated if I would extend the note for six months that he would pay me a bonus of one hundred dollars, and at this period I felt that I could do without the money on the note for the six months, and extended it for him without any payment and with-

352 out any consideration, merely as a friendly act. He stated that if I advertised his house it would ruin him in business and cause him serious loss and embarrassment, and, after the many appeals, the note was extended from time to time as stated.

WITNESS. (Addressing his counsel.) That was in 1875, was it not?

(Counsel for complainants objects to consultation between the witness and his counsel while he is giving his testimony.

(Counsel for defendants Davis instructs witness that he can ask for any date in this case that will refresh his recollection, if he thinks proper.)

WITNESS. Finally, when the last extension of six months came due, I told him, Sweet, that the note must be paid. He stated that he was trying to negotiate a loan upon the property that would suffice to pay all existing incumbrances; he stated to me that he had spoken to Mr. Stanley Jones and requested Jones to procure a loan for him on the property. I told him that he must stir rapidly or the property would most certainly be advertised. The negotiations with Jones were not completed, and he re-
353 quested me to manage the property and bring him out the best I could. I spoke and wrote to several of my friends to try to obtain eight thousand ($8,000) dollars on the property, but no one would lend that amount; so I told Sweet that the property would not stand the amount of existing incumbrances. He still urged me to do the best I could in the matter. I then tried to obtain a loan of seven thousand ($7,000) dollars, but no one would lend it. I next tried six thousand ($6,000) and no one would lend that amount; I finally tried for five thousand ($5,000) and I had several persons all anxious to take it. I remember about five minutes after I had negotiated the loan with Mr. Williams I received a telegram from Philadelphia, from parties anxious to make the loan for the five thousand; that is how the loan with Williams came to be made.

(Counsel for the defendants Davis requested the examiner to again read the last question and answer, which the examiner accordingly did, and here notes it on the record at the request of counsel for the complainants.

354 Counsel for defendants Davis requested the examiner to note on the record that this entry or memorandum is made upon the request of the counsel for the complainants, and counsel for Mr. Davis says that he proposes to conduct this case, so far as the defendants are concerned, as he deems proper, without impertinent interferences on the part of counsel.

Q. Had you finished your answer to my last interrogatory when I asked the examiner to read the question and answer?

A. Yes, sir.

Q. Had you anything, in that connection, more to say in answer to the question?

(Objected to by Mr. Edwards.)

A. No.

Q. Did you in the month of September, 1876, at the time this Williams loan was negotiated, tell Mr. Sweet that you were the holder of these notes?

(Objected to by Mr. Edwards, as leading.)

A. No.

Q. Did you at that time tell Mr. Sweet that you had those notes in your safe, or words to that effect?

(Objected to as leading,)

A. No.

355 Q. In what capacity did you receive the proceeds of this loan from Mr. Williams?

(Objected to by Mr. Edwards.)

A. In the capacity already stated, namely, agent for Edwin J. Sweet.

Q. Who transacted business in September, 1876, and prior thereto, for Addie M. Sweet, if you know?

A. Edwin J. Sweet, he' husband.

Q. Did you know the fact at that time?

A. I did.

(Counsel for defendants Davis requests the examiner to suspend the examination at this point until to-morrow, May 3rd, at one o'clock. Accordingly adjourned until the time designated.)

FRIDAY, *May 3rd*, 1878.

Met pursuant to adjournment at one o'clock p. m. Present, Mr. Edwards for complainants; Mr. Charles A. Elliot for defendants Davis, and D. O'C. Callaghan, esq., for defendants Sweet, all of counsel, and Charles T. Davis, and E. J. Sweet, who was also present at the session of May 2nd, during the delivery of the testimony of Charles T. Davis.

356 Continuation of direct examination of Charles T. Davis.

Examined by Mr. ELLIOT:

Q. To whom was the proceeds of the Williams loan, namely, five thousand dollars, paid by the defendant Williams?

A. The check was made payable (here witness requests to see the check, or a copy of the check which has been filed with the deposition of Mr. Williams, to which counsel for the complainants objects, when witness continues) to A. Davis & Son, I think. That is my best remembrance.

Q. Were you in that transaction of the loan the agent of anybody other than E. J. Sweet; if so, who?

(Objected to by Mr. Edwards.)

A. I was nobody's else agent, that I know of, unless it was Addie M. Sweet; I never knew her in the transaction.

Q. By whom was the interest on the Sweet notes paid to Jackson?

A. It was paid by me; that is, when the interest came due if it was not convenient for Sweet to pay the instal'ment I would give Mr. Jackson a check and Sweet would repay me at his convenience.

357 Q. Was there ever a conspiracy, combination, or confederacy between yourself, Augustus Davis, and the defendant Sweet to defraud the complainants or swindle them?

A. No; there never was any confederation or conspiracy.

Cross-examined by Mr. EDWARDS:

X Q. 1. When were you born?

(Objected to by Mr. Elliot.)

A. The law always requires the production of the best evidence at hand. I cannot tell you; you have got to go somewhere else. If you ask me what date is put down in the Bible——

X Q. 2. What is your age?

A. I was twenty-four (24) years old on the 26th of October, 1877, I think. No man can swear positive as to his age.

X Q. 3. Please examine paper now shown you, filed in this case Febru-

ary 13th, 1878, and endorsed joint and several answer of defendant' Charles T. Davis and Augustus Davis, and state whether the signature thereto by Charles T. Davis was written by you.

A. (Witness examining the paper referred to.) I think it was.

358 X Q. 4. Examine the signature "Charles T. Davis" to the affidavit attached as a part of this paper, or answer, and state whether that was written by you.

A. (Witness examining paper referred to.) I think it was, sir.

X Q. 5. Did you in fact take the oath to which you thereto subscribed, before the notary public, to wit, M. P. Callan, named at the end of this jurat?

(Objected to by Mr. Elliot.)

A. I think I did; I don't remember about being sworn or anything, but it states so there.

X Q. 6. Did you or not swear to this answer and sign the affidavit thereto attached before Michael P. Callan, notary public?

(Objected to by Mr. Elliot.)

A. I don't remember all the routine; I suppose I did, though, if he states so in the paper.

X Q. 7. Will you say that you did or did not so swear?

(Objected to by Mr. Elliot.)

A. I cannot say that I did or did not; I don't remember. I testify as to the best of my belief.

X Q. 8. Do you now say that what is stated in this anwer, which you admit as over your signature, upon your own knowledge is true in every particular?

(Objected to, unless the answer is shown to the witness.)

359 (Counsel shows answer to witness, who thereupon replies:) To the best of my belief, they are.

X Q. 9. Are you as positive that what you have stated in this answer, on your own knowledge, is true to the best of your belief, as you are as to what you have stated in your direct examination, taken at our last session?

A. What I have stated in my direct examination is my best knowledge after great reflection. The answers filed by me were prepared hurriedly, and upon my best information and recollection at that time; we did not have but about three days.

X Q. 10. Do you know, or have you any information of any facts since you swore to that answer that would change you at this time in relation to your answer to this bill? If so, state fully.

A. As I have stated before, my testimony in the direct examination has been the result of great thought. I have given a great deal of time, so as to be as careful as possible in my statements.

X Q. 11. Question repeated.

A. If you wish to cross-examine me on my direct examination you can do so; I cannot go outside of that.

360 X Q. 12. Do you decline to answer my question in any other form?

A. I have answered as fully as I can; if you will inform me what you want to prove I will try and answer directly to the point, as near as I can.

X Q. 13. Question repeated.

(Counsel for defendants Davis objects, as witness has already stated that he has answered as fully as he can.)

X Q. 14. Will you now state that any of the facts contained in your answer, based upon your personal knowledge when you signed it, are not true?

(Objected to by Mr. Elliot.)

A. If you will specify any particular point or points in the answer upon which you want my best information, I will give it to you.

X Q. 15. I wish you simply to answer my questions. Will you please answer my last interrogatory?

A. I cannot answer more fully than I have. I will answer anything you want if it is simply brought right out, square to the point, in your question.

361 X Q. 16. What property, if any, did you own, either real or personal, when you first called upon the firm of Jackson, Brother & Co., or any member thereof, in relation to the five thousand dollar note of your father, described as Exhibit J. N. O., No. 9½?

(Objected to by Mr. Elliot, as nothing has been said by the witness in the direct examination, nor has any question been asked touching the ownership of the real estate by either him or his father at that time, and I object to the counsel for complainants cross-examining outside of the direct examination.)

Witness asks counsel: Shall I answer?

COUNSEL. No, you need not answer unless you think proper.

WITNESS. I cannot state just what property, either real or personal, I owned at that time, from memory, but if it is material to the case I will file a full and complete statement of my estate, both personal and real, at that time.

X Q. 17. Did you, in fact, when you first called upon this firm in relation to this five thousand dollar note of your father, own any real estate in your name?

(Objected to by Mr. Elliot.)

WITNESS. When was that; to what time do you allude?

362 X Q. 18. You must refer to your own testimony for information?

A. I think that the southern part of lot (11) eleven, in square (455) four hundred and fifty-five, improved by buildings numbered 613 & 615, 7th street, northwest, opposite United States Patent Office, was in my name.

X Q. 19. Was it unincumbered?

(Objected to by Mr. Elliott, who instructs the witness that he need not answer any question of this character, as to incumbrances or anything about it.)

A. I decline to answer, in the face of the objection.

X Q. 20. Had you any other property standing in your name at that time?

(Objected to by Mr. Elliot, who instructs witness now not to answer that question.)

A. In the face of instruction of counsel, I decline to answer.

X Q. 21. Was not this property you describe on 7th street, opposite the Patent Office, encumbered by a deed of trust from you for the whole amount of the purchase-money, and did you not fail to pay it, and was it not sold under the deed of trust for not more than the incumbrance.

(Counsel for defendants Davis instructs witness not to answer.)

363 WITNESS. I am willing to answer it.

COUNSEL. (Continuing.) And notwithstanding his desires, as now expressed, to answer that question.

WITNESS. I would like very much to answer it.

(Counsel for complainants requests the examiner to ask the witness to answer the question, or whether he refuses; which is accordingly done.)

WITNESS. I have no other course, so long as my attorney instructs me not to answer, to do otherwise.

X Q. 22. When you called upon this firm in relation to this five thousand dollar note of your father, in his behalf, as you state, were you of the full age of twenty-one years.

(Objected to by Mr. Elliott, for the reason that the witness has stated his age at present, and has likewise stated the time of this call upon the complainants.

Witness requests the examiner to read the objection, which is done.)

A. The counsel for the complainants must take my answer from what I have already stated. And let me say right here, that the counsel for the complainants has repeatedly stated to me that he intended to give me all the questions possible on my cross-examination, and I cannot see

364 why cross-questions should be so repeatedly strung out upon this record when there seems to be no object, more than is usual with cross-examinations, to prevent the truth from being brought out, rather than to extract it.

COUNSEL. To which interpolation on the part of the witness counsel for complainants states that what the witness has said in regard to his cross-examination is untrue in fact.

X Q. 23. Do you decline to answer this last question in any other manner?

A. I do not.

X Q. 24. Then please answer it.

A. To the best of my recollection, I think I had reached my majority; I do not remember exactly.

X Q. 25. Do you mean by your majority the age of twenty-one?

A. Yes, sir. I had been doing business in my own name, and in company with other people on my own account, since I was about nineteen years old.

X Q. 26. You stated that you had in your possession the Sweet notes of January 1st, 1875, described in the bill; from whom did you obtain them?

A. From Edwin J. Sweet. If the counsel desires to know the full history of how they came into my possession I will give it to him.

365 COUNSEL. I propose to conduct this cross-examination as I may be advised without any suggestions from the witness, and simply request him to answer my questions as I put them.

X Q. 27. After you received these four notes what did you do with them?

A. I locked them up in my safe immediately after they were handed to me by Sweet.

X Q. 28. what other papers, if any, were handed to you at the time you received those from Sweet?

A. I think he handed me the deed of trust which secured the notes, signed by himself and wife; I cannot testify positively whether the trust was handed to me by Sweet or by the notary public who took the acknowledgement.

X Q. 29. Who put it on record?

A. I did, I think.

X Q. 30. Who obtained it from the record office?

A. I obtained it from the record office on the 4th of February, 1875, I think; the record will show.

X Q. 31. What did you then do with it?

A. I cannot remember just what I did, but I think I examined it thoroughly to see that no errors were in it, and filed it with the notes and abstract.

X Q. 32. Did you put them in your safe?

A. I think I did.

366 X Q. 33. With the notes?

A. Yes, sir; I think so.

X Q. 34. Any other papers?

A. I think two or three policies of insurance, and some U. S. bonds.

X Q. 35. I mean connected with this transaction?

A. They were placed in an envelope and placed in the safe, marked "property of Charles T. Davis."

X Q. 36. When did you next disturb this package or its contents, or any of its contents?

A. I cannot distinctly say, but I think that the notes were placed in the envelope, unendorsed by my father, to whose order they were made payable, and a day or two afterwards I took them out and requested my father to endorse them in blank.

X Q. 37. What next took place, or what disposition, or what was the next disposition you made of either of these notes or the papers pertaining to this property, as you have stated?

A. I cannot state positively, but I think they were not disturbed for nearly two weeks.

X Q. 38. What then occurred?

A. I took the three notes drawn by the Sweets to Mr. William B. Jackson in payment of the five thousand dollar note of December 8th, 1874, drawn by my father.

367 X Q. 39. What next occurred in relation to any of the other papers you have mentioned in connection with these notes?

A. I cannot state positively, but I think I took the abstract of title that was filed with the notes, and endorsed on the back of it the name of E. J. Sweet, stating that was an abstract, and I think I placed it with the remaining twenty-five hundred dollar note.

(Witness requests to see the abstract of title, which he calls the Williams abstract, filed as an exhibit. Counsel for the complainants objects to the witness, while under cross-examination, examining these papers.

Witness examines the exhibit marked S. T. W., B, attached to the deposition of Mr. Williams; also Exhibit J. N. O., No. 10, against the protest of counsel for complainants.)

WITNESS. (Continuing.) I think I paid them with the abstract, deed of trust, and insurance policies, and memorandum of agreement signed by Edwin J. Sweet, relating to the purchase of lot 49, square 513, also a

bond for five thousand dollars, or a copy of a bond for five thousand dollars, made by my father and myself to indemnify Sweet against the disposal of the twenty-five hundred dollar note, as that note was to have been paid by property on 8th street between M & N, but the title to which
368 having proved defective, the twenty-five hundred dollar note was simply taken as security that the title would be made all right, and the property conveyed to me or my father, at which time the twenty-five hundred dollar note was to have been surrendered.

X Q. 40. When did you next take the deed of trust, certificate of title, or any other papers connected with this matter, from this envelope?

A. Do you mean the papers which I stated were remaining in the envelope, after the three notes of eighteen hundred dollars each were taken out?

X Q. 41. Of course.

A. I cannot remember exactly what I did with them or when they were removed from the envelope; sometimes, when transactions have been closed, and papers no longer necessary, I take them from the safe and file in a vault.

X Q. 42. Please state when you first parted with the possession of the other papers pertaining to this transaction, left in this envelope.

A. I think that after waiting for Sweet to perfect the title to the 8th street property, I finally told him that I should make some disposition of the note; and as Messrs. Jackson, Brother & Co. held some paper
369 which I had transferred to them after the three eighteen hundred dollar notes, which subsequent paper I desired to have, I think the twenty-five hundred dollar note was exchanged for it some two months or so after the first notes left my possession, as I have stated.

X Q. 43. Did no other papers leave your possession in relation to these notes or pertaining to the security therefor, at this time?

A. No.

X Q. 44. What disposition, if any, and when, did you make of the deed of trust, policies of insurance, and certificate of title?

A. I cannot remember distinctly, but I think the policy of insurance was for only a short time, being a builder's risk on the buildings, and that when it expired I took it to the office of the company and had another policy issued, which new policy was placed in my safe.

X Q. 45. What did you do with the old policy?

A. That I cannot remember distinctly; when policies expire I generally file them in a pigeon-hole marked "canceled insurance policies."

X Q. 46. What did you do with the new policy?

A. I have already stated that after it was issued I placed it in my safe.

X Q. 47. When did you see that new policy?

A. That I cannot remember.

370 X Q. 48. Will you state that you ever did place that new policy in your safe?

A. I did.

X Q. 49. You are positive of that?

A. I am almost certain.

X Q. 50. What is the amount of that policy?

(Counsel for defendants objects to any testimony touching the policy of insurance except the policy of insurance spoken of in this witness' direct

examination as being in existence in February, 1875, and the witness need not answer any questions touching any other policy of insurance.)

X Q. 51. You have before answered my question and made a statement of what disposition you made of the original policy, which, as you stated, was for a builder's risk, and to run but for a short time. Now tell me what you did, or whether you ever parted with the possession of the certificate of title you speak of.

A. I most certainly parted with the certificate of title, policy of insurance, and every thing else relating to Sweet in this transaction.

X Q. 52. Tell me when and to whom you delivered them, or what disposition you made of them. When I speak of them, I refer to
371 the deed of trust and the certificate of title, the disposition of which you have not advised me.

A. I told you that I could not distinctly remember just what disposition was made of them, as I considered that I had no further interest in them until Sweet should perfect the title to the 8th street property, or default should be made in the payment of the notes or interest secured by the deed of trust.

X Q. 53. After you delivered the twenty-five hundred dollar note to complainants, as you state, when did you next see the certificate of title, the deed of trust of January, 1875, and the policy of insurance, or did you, in fact, ever see them after the delivery of this twenty-five hundred dollar note?

A. I certainly did see them after the first delivery of the twenty-five hundred dollar note to Jackson, Brother & Co., as I had occasion to refer to some one or two of the papers.

X Q. 54. You speak of a first delivery of this twenty-five hundred dollar note; was it ever returned to you? If so, how long after that first delivery of it to this firm?

A. I think that it was returned to me within a few days after its first delivery to Jackson, Brother & Co., as I met Sweet, and I think
372 told him that I had parted with it, but if he could perfect the title to the 8th street property immediately I would get it back; he stated to me that a man by the name of Howser, by whom the title of the property was made imperfect, was able to cure it, and thereupon I obtained possession of the note.

X Q. 55. After you thus obtained it back from this firm how long did you hold it?

A. That I cannot answer positively.

X Q. 56. What did you do with it?

A. I held it a short time, expecting the title referred to to be perfected, and then, I think, it next went into the hands of Otis Bigelow, as security for a temporary loan.

X Q. 57. How long did Bigelow hold it?

A. I cannot tell.

X Q. 58. Did you ever recover it back from him?

A. I think I did; must have recovered it.

X Q. 59. Then what did you do with it; if anything?

A. I think that, having mentioned to Jackson, Brother & Co. that this note could be exchanged for a house, I thought they had better have it in their possession with the other notes.

X Q. 60. Did you deliver this note to this firm as a gift and not receive any consideration therefor from them?

373 A. I certainly did not deliver it to Jackson, Brother & Co. as a gift, as they were more able to give to me than I to them.

X Q. 61. What was the consideration?

A. That I cannot remember; but I do not think that I was paid or received any consideration; I think it was simply left as a kind of additional security to these other notes; I do not remember; I cannot find any check or single item.

X Q. 62. Will you state that Jackson, Brother & Co. did not, at the time of this delivery of this twenty-five hundred dollar note give you full value therefor?

A. They certainly did not give me value at that time.

X Q. 63. Have you not received full value therefor?

A. I have no remembrance of having received full value for it.

X Q. 64. Please give the date of this last delivery of this twenty-five hundred dollar note to this firm.

A. That I cannot fix distinctly.

X Q. 65. How long was it after its date?

A. I cannot remember just how long, but I think it was a short time before the first semi-annual instalment of interest came due upon the note.

374 X Q. 66. Did you deliver, at the time of delivery of this twenty-five hundred dollar note, any other papers pertaining to these four notes of January, 1875, or their security to this firm or any member of it?

A. I cannot remember distinctly; I think that I said something about papers to Mr. William B. Jackson, but I cannot remembe' distinctly that I gave him, at that time, the papers mentioned.

X Q. 67. Did you ever give them these other papers, to wit, the policy of insurance, certificate of title, and the deed of trust on this property?

A. I think that I gave them the papers mentioned.

X Q. 68. When?

A. That I cannot remember distinctly.

X Q. 69. Was it not before you paid the first semi-annual installment of interest to them on these notes?

A. I think not.

X Q. 70. Why do you think so?

A. Because I have an indefinite recollection of referring after that time to the abstract of title. Some one came to me and stated that they held a tax deed, or some kind of lien upon the property on which the notes were secured.

375 X Q. 71. Who was that person?

A. I do not remember distinctly. It might have been a gentleman by the name of Slater, or William L. Bramhall. I don't remember which.

X Q. 72. Are you sure it was one of those two gentlemen?

A. I am not fully certain whether it was or not; I do not remember distinctly.

X Q. 73. Is there anything else that fixes your recollection in relation to the time of the delivery of these papers to this firm?

A. Nothing definately.

X Q. 74. Had the first note that was paid by you matured when you delivered the trust and certificate of title to this firm?

A. I think that I had the abstract of title, policy of insurance, and deed of trust after the first note matured and was paid by me, but whether I borrowed them from Jackson, Brother & Co. or not I cannot say definately.

X Q. 75. Why did you think this—that you had them after?

A. Because, as I have stated, I felt angry with Sweet, that default had been made in the payment of the first note, and had some idea of foreclosure; I felt very angry because, having parted with the notes
376 and having received no benefit of any amount, to be compelled to pay the first note in cash.

X Q. 76. Will you state positively that you did not deliver these papers to this firm before that first note matured?

A. I cannot state positively, as after, when I called to see William B. Jackson he stated to me that he did not care to be lumbered with papers relating to the notes, as, in buying paper he relied upon the honesty and faithfulness of the sellers, and that he did not buy paper from strangers, and that he looked to his friends to pay the paper which they delivered to him, and they must be careful what security they took, as he trusted simply to the honesty and good faith of the parties from whom he purchased, and he looked to them to pay the money which they obtained from him in case the principals of the notes should fail to do so; and sometimes I would keep them two, three, or four months, and even for a year or so before delivering them to him.

X Q. 77. Will you state positively that you did not, in fact, deliver these papers when you last delivered that twenty-five hundred dollar note to that firm?

377 (Objected to by Mr. Elliot)

A. If I could remember distinctly I would state it; but on account of the multitude of transactions in which I was at that time involved, with a great number of people, and for all kinds of amounts, I cannot fix the time definitely.

X Q. 78. You state about taking out a new policy of insurance on this property; who paid the premium?

(Objected to by Mr. Elliot, who states to the witness that he is not bound to answer any question touching any policy of insurance except the one inquired about in direct examination, which was in existence, according to the testimony, in February, 1875; and this instruction is given for the purpose of saving time and expense.)

A. I cannot say definately, as the deed of trust gave any person who had an interest in the property authority to pay the premium and charge it against the real estate.

X Q. 79. Will you say that you did not pay it?

(Objected to by Mr. Elliot.)

A. I will say nothing of the kind.

X Q. 80. Did you, or not?

378 (Objected to by Mr. Elliot, for the reason that witness has already given his best recollection, and I tell him now that he need not answer another question about this policy, as it is nonsense, and but taking up more time.)

WITNESS: I will try to give you my best recollection, Mr. Edwards, and if any papers are called for I will produce them.

(Counsel for complainants requests the examiner to read the question to witness, and ask him if he declines to answer—which was accordingly done.)

A. I have given you my best recollection, and can say nothing further on this subject.

X Q. 81. Examine the paper now shown you, which, for identification, is marked Exhibit J. B. L., No. 1, and state if you did not deliver that paper to the complainants in this cause at the time you delivered the three notes for eighteen hundred and thirty-three dollars each, or at the time you last delivered the note of twenty-five hundred dollars referred to.

(Objected to by Mr. Elliot.)

A. (Witness examines the paper.) I think not.

X Q. 82. Will you swear positively that you never had that pa-
379 per in your possession, and did not, after the 3rd of February, 1875, and prior to, or at the time you last delivered the twenty-five hundred dollar note to Jackson, deliver that paper to them?

(Objected to by Mr. Elliot.)

A. I may have done so, but cannot say positively.

X Q. 83. Did you not, at the expiration of that policy, to wit, October 19th, 1875, call at the office of the company, in this city, and renew it, and in person pay the premium for such renewal?

A. I may have done so; and I think when I called at the company's office I had an additional insurance placed upon the property and noted on the policy; for just what amount I cannot state.

X Q. 84. Do you mean to say that when you renewed that policy, to wit, October 19th, 1875, which continued it in force for one year from that date, that you then increased the amount of insurance?

A. I think I did. I do not remember certainly, but I think it was for the purpose of securing a part of the twenty-five hundred dollar note, which was not originally intended to stand as a lien against the property—for the 8th street property.

380 (Said paper herewith filed, and marked Exhibit J. B. L., No. 1.)

X Q. 85. Have you any memorandum or entry in any book kept by you, or in your office, indicating when any of these notes, or any of the papers given or held as security therefor, were delivered to Jackson, Brother & Co.?

A. I cannot say definately, but will examine, and if any memorandum definately fixing the time can be found, counsel for complainants are welcome to them.

X Q. 86. Did you not, at the time of the delivery of these notes, keep what is familiarly known as a bill book?

(Objected to by Mr. Elliot.)

A. I did.

X Q. 87. Have you that book now?

A. I have; but have not got it with me.

X Q. 88. Have you it under your control?

A. It was when I last saw it.

X Q. 89. When did you last see it?

A. A few days ago.

(Counsel for complainants here requests the witness to produce this bill book at the next session.)

WITNESS. I will cheerfully produce the book named, and any further data, memorandum, paper, or anything pertaining to this cause that he may now suggest.

381 X Q. 90. After you took up this note for $1,833.33, as you have stated, what did you do with it?

(Objected to by Mr. Elliot.)

A. I placed it in my safe among other unsettled claims.

X Q. 91. Where is this note now?

A. I think it is in my possession.

(Counsel requests witness to produce this note at the next session.)

(Counsel for defendants Davis instructs witness not to promise to produce the note, as he did the other papers, until it be ascertained whether it be material to this issue.)

X Q. 92. Have you in your possession the original release from yourself and William Stickney to Addie M. Sweet, described in the 5th paragraph of the bill?

A. I did have the release, but have not seen it for more than a year or six months.

(All this line of examination objected to by counsel for defendants Davis.)

X Q. 93. Do you know where that release is?

(Objected to by Mr. Elliot.)

A. I do not know positively; it may be in my possession, or it may be that I gave it to Edwin J. Sweet; I cannot say positively.

X Q. 94. Have you recently looked or searched for this release?

382 A. I have.

X Q. 95. Do you know where it is?

A. I have already stated that I do not positively, but if it is among my papers or under my control, it will certainly be produced in this cause.

(Counsel for complainants requests the witness to thoroughly examine his papers, if possible find this release, and produce it at the next session.)

X Q. 96. Do you know what became of the five thousand dollar note of September 27th, 1876, which was the note payable to the order of the defendant Samuel T. Williams, and secured by the trust described in the 6th paragraph of the bill, or where it now is?

A. I think it is in my or Mr. R. K. Elliot's possession, as we were co-trustees under the trust by which the debt was foreclosed.

X Q. 97. When did you last see that note?

(Objected to by Mr. Elliot.)

A. The day the sale was finally closed.

X Q. 98. Have you seen it since?

A. I do not remember positively.

X Q. 99. Was it not delivered to you by Mr. Elliot, your co-trustee?

A. As I have already stated, it may be in my possession, but whether it was delivered to me by Mr. Elliot or Mr. Williams I cannot say.

X Q. 100. Will you please search for this note, and produce it, if you find it, at the next hearing?

A. I shall, most cheerfully.

383 Cross-examination suspended until the next session.
Adjourned until Monday next at one o'clock.

WEDNESDAY, *May 8th*, 1878.

Met pursuant to notice from counsel, at ten (10) o'clock a. m.

Present, Mr. Edwards, Mr. Callaghan, and Mr. Elliot of counsel, and Edwin J. Sweet and Charles T. Davis.

Continuation of cross-examination of Charles T. Davis.

Examined by Mr. EDWARDS:

(By consent of counsel for complainants, counsel for defendants Davis withdraws his objection to cross-interrogatory 16, in testimony of Charles T. Davis, also instruction to witness after cross-interrogatories 19 and 21, and the objection to cross-interrogatory 22, and instruction and objection to cross-interrogatory 78; also to cross-interrogatory 80, and suggestion to witness in answer to No. 95.)

X Q. 101. You say that Mr. Jackson did not know from you, at the time of the delivery to him of the Sweet notes of January 1st, 1875, that they were secured upon the real estate involved in this suit; have you ever spoken to them, or any member of the firm, about the trust deed from Mr. & Mrs. Sweet, given to secure these four notes?

384 A. I do not remember.

X Q. 102. Will you say that you have not?

A. I have given my best recollection; I do not remember.

X Q. 103. Have you not, since these notes were delivered to the firm, had several conversations with William B. Jackson in relation to them, and the security of the property described in this suit?

A. I have.

X Q. 104. At or about the time that you took up the first note for $1,833.33, as you have stated, did you not also pay the interest that fell due January 1st, 1876, on the other three notes then held by this firm?

A. I did.

X Q. 105. Did you not also call upon this firm in July, 1876, and then pay to them the interest due on the three notes then remaining unpaid up to July, 1876?

A. No, sir; I did not call on them in July, 1876, I don't think.

X Q. 106. Did you pay any interest to that firm on those notes in July, 1876?

A. I think not. Now, if you ask me if I paid any after that, I will tell you.

X Q. 107. Did you pay any interest to this firm after the month of July, 1876, on the three notes then remaining unpaid?

385 A. In the month of August, 1876, I think I gave Jackson, Brother & Co., a draft on the Southwalk National Bank of Philadelphia, to pay interest on all notes upon which I or my father were endorsed and held by them, including the Sweet notes and many others upon which interest was due at about that time.

X Q. 108. Was that before or after the delivery to you of the five thousand dollar check by Samuel T. Williams for the note to his order, secured by the trust of September 27th, 1876?

A. I think it was before.

X Q. 109. How long before?

A. I think it was three or four weeks, but I do not remember. The new Sweet loan was then being negotiated.

X Q. 110. What do you mean by the new Sweet loan?

A. The loan of September, 1876, by Mr. Samuel T. Williams.

X Q. 111. Have you not, since the sale of this property, called, in company with Mr. William B. Jackson, at the house of Mr. Sweet, No. 437 M street, northwest, being the premises involved in this suit, for the purposes of showing him the premises?

A. I have. Now, let me answer further.

X Q. 112. Did you not, then and there, represent*ed* to Mr. Jack-
386 son that those were the premises which he held as security for the three notes of January, 1875, described in this bill?

A. I made no such representation.

X Q. 113. What did you call there for?

A. Some time before I called at the premises before mentioned in company with Mr. William B. Jackson. I had had several conversations with him in relation to the settlement of the unpaid Sweet notes held by him. I told him that it was impossible for me to pay the notes in cash, as I was being pushed severely by some of my credieors, and that I desired him to take property in settlement of the notes. He went with me on the 7th street cars to the M street property, and I carried him through my father's house and the Sweet property, and told him that the Sweet house was encumbered by a mortgage of five thousand dollars, and that I would have that property conveyed to him subject to the encumbrance; also other property on 2nd street east, on Capitol Hill, in settlement of the notes held by his firm, being the same notes in question in this suit. He stated that he did not desire to hold or have any real estate, and told me that if I would pay the note then past due that the balance could
387 be extended as long as I might desire, not exceeding five years, with interest at six per cent., payable semi-annually. He did not know at that time that the notes which he held were secured upon the Sweet property, as he told me at that time, while in Mr. Sweet's house, that he knew nothing about the security for the notes or where it was situated. After we left the Sweet property we went to the Capitol Hill and inspected the 2nd street property, and while in the cars going towards his store he stated again that he did not desire to have any real estate, as they had all that they desired to carry, and renewed his proposition to extend all paper held by his firm at a reduced rate of interest, provided the Sweet note, then pass*ed* due, and the interest on the same were paid in cash.

X Q. 114. Had he not, prior to this, threatened to take steps against the parties to this paper towards its collection?

A. Mr. Jackson never made any threats to me about pushing the collection of the paper; he was always kind and courteous, and the words push or force collection were never used by him to me until after the institution of the suits entered by him against myself and others.

388 X Q. 115. You have known, have you not, since the time you delivered these Sweet notes to Mr. Jackson up to the time of the institution of this suit that they held them?

A. I did.

X Q. 116. Mr. Williams in his deposition states that he required an ab-

stract of title to this property from Mr. Ashford, and that he communicated this requirement to and so instructed you, and that an abstract was furnished in pursuance to such instructions. Is this true?

A. If counsel for complainants wish to bring out any new matter in this cross-examination, they must place me on the stand and swear me as their witness.

X Q. 117. Question repeated.

(Objected to by Mr. Elliot, the question meaning to imply that there was an abstract furnished by Mr. Ashford at the request of Mr. Davis, acting for Williams.)

A. Yes.

X Q. 118. He further states that to the best of his knowledge and belief "the paper filed as an exhibit with the original answer is a copy of the abstract furnished." Is this also true?

A. Yes.

389 X Q. 119. Who drafted the five thousand dollar note of September 27th, 1876, to the order of defendant Williams, described in the bill?

A. My clerk, Sidney Y. Smith.

X Q. 120. Under whose instructions did he prepare it?

A. I do not remember.

X Q. 121. Did you not furnish him with the data or instruct him to prepare this five thousand dollar note?

A. I don't remember distinctly.

X Q. 122. Was not Smith in your employ at that time?

A. Yes.

X Q. 123. Who drafted the deed of trust to yourself and the defendant R. K. Elliot, described in the bill?

A. My clerk.

X Q. 124. Under whose instruction was it prepared and drafted?

A. I do not remember distinctly.

X Q. 125. Who drafted the deed of release from yourself and William Stickney to Mrs. Sweet, described in the bill?

A. That I don't remember.

X Q. 126. Did not you or your clerk draft it?

A. I cannot say, as I do not remember.

X Q. 127. Was not this release prepared or written by you or your clerk, Smith, in your office?

A. It may have been, but I do not remember distinctly.

390 X Q. 128. Do you not know that this five thousand dollar note, the trust from Mrs. Sweet to yourself and the codefendant Elliot, and the release from you and Stickney to Mrs. Sweet, as described in the bill, were drafted in your office under your instruction?

(All this line of examination objected to by Mr. Elliot.)

A. I have given my best remembrance.

X Q. 129. Who drafted the deed from you and co-trustee Elliot to the defendant Blackwood of July, 1877, described in the bill?

(Objected to by Mr. Elliot, as no reference is made to this deed in the direct testimony of this witness.)

A. I think my clerk.

X Q. 130. Under whose directions or instructions did he prepare it?

(Objected to by Mr. Elliot.)

A. I tell you I do not remember who prepared it; I may have written it myself.

X Q. 131. Who drafted the trust-deed from Blackwood to your father and the defendant Ashford to secure the five thousand dollar note from Blackwood, made payable to your order and your co-trustee Elliot, described in the bill?

A. I think my clerk did.

391 X Q. 132. Who drafted or prepared the note secured by that trust?

A. My clerk.

X Q. 133. Were not all the papers I have mentioned drafted in your office by you or by your clerk under instructions or directions from you?

(Objected to by Mr. Elliot.)

A. I have given you my best remembrance to each of the several questions.

X Q. 134. Do you know where this deed is from you and your co-trustee Elliot to Blackwood?

(Objected to by Mr. Elliot.)

A. I do not.

X Q. 135. When did you last see it?

A. I cannot remember.

X Q. 136. Have you it in your possession?

A. I think not; it may be.

(The last three questions objected to by Mr. Elliot.)

X Q. 137. Have you with you the original note for five thousand dollars, to the order of the defendant Williams, of date September 27th, 1876?

A. I have.

X Q. 138. Will you please produce it?

A. Certainly. (Witness hands the paper referred to to counsel.)

(Counsel for complainants, now cross-examining witness, requests
392 the examiner to make a copy of this note and the endorsements thereon, and that the witness allow him to take the paper for that purpose.

Counsel for defendants Davis objects to the introduction of this note by filing the same, or by a copy, as evidence in this cause, unless the witness is called as a witness for the complainant, for reasons of law too plain to mention.

Witness refuses to allow a copy to be made, or to file the original unless he is placed on the stand and sworn as a witness for the complainants, Jackson, Brother & Co.)

X Q. 139. Examine the paper now shown you, being the trust deed from Addie M. Sweet and her husband to yourself and defendant R. K. Elliot, and state whether your clerk did not prepare that deed under your instructions?

(Objected to by Mr. Elliot.)

A. I have already stated that I did not remember distinctly under whose directions the deed of trust mentioned was prepared.

X Q. 140. Have you found the original release deed from you and the defendant Stickney to the defendant Addie M. Sweet, which I requested you to look for at the last session?

393 A. I have not; I have searched for and found and have with me now all the other papers named, but cannot find the release although I had searched most diligently for it.

X Q. 141. After that release was recorded, you state that you had it in your possession; please tell me when and where you last saw it, and under what circumstances?

A. I placed it in my vault with other papers and don't remember to have seen it since. In January of this year I cut the vault doors out and a large number of papers were left exposed, after which time a number of papers were missing, and I have not since been able to find them.

X Q. 142. Did you not, shortly after the institution of this suit, see that release?

A. I do not remember.

X Q. 143. Will you state, positively, that since the time you received that release from the record office you have never seen it?

(Objected to by Mr. Elliot.)

A. I stated nothing of the kind, and if the release was under my control, or could be possibly produced, I should cheerfully file it, under the conditions named above.

394 X Q. 144. Were not all the papers pertaining to the negotiations of the loan of September, 1876, except the original certificate of title, prepared in your office?

(Objected to by Mr. Elliot.)

A. I have given you my best remembrance to all the questions asked in this line.

X Q. 145. Can you give no other answer?

A. I cannot.

X Q. 146. That release purports to be signed by your father, as the party secured in the trust, it purports to release; did you see your father sign his name, as the party secured, to the original release?

(Objected to by Mr. Elliot.)

Witness requests a copy of the release to be shown him, which counsel accordingly hands him.

A. I do not remember.

X Q. 147. You state, in your answer, that your father, Augustus Davis, signed this release at your request, is that true?

A. I requested my father, Augustus Davis, to sign the release as the holder of one of the notes under the trust, and I think the release so states.

X Q. 148. Did not your father sign that release in your presence at your request and in your office.

395 (Objected to by Mr. Elliot.)

A. I have given you my best remembrance. As I have stated I requested him to sign the release simply as a holder of one of the notes secured by the trust of January 1st, 1875.

X Q. 149. Please at whose instance the defendant Stickney signed that release.

A. At my instance.

X Q. 150. Had you signed it when you presented it to Stickney for his signature?

A. I do not remember. I may have signed it afterwards; I cannot say distinctly.

X Q. 151. Where was that release signed by Stickney and yourself?

A. I have stated that I don't know just when or where I signed it.

X Q. 152. Where did Stickney sign it?

A. I do not remember distinctly. I think it was in the office of his bank, corner of 15th street and New York avenue.

X Q. 154. Please state what occurred or was said between you and Stickney at the time you called on Stickney to execute that release.

(All this line of examination objected to by Mr. Elliot, who instructs the witness not to answer unless he feels disposed to.

Witness refuses to answer under the instructions of his counsel.

396 Counsel for complainants reserves the right at the close of this session to have this question certified to the court for its determination.)

X Q. 154. After that release was signed by Stickney did you not obtain a notary public to take his and your acknowledgement?

(Objected to by Mr. Elliot.)

A. I don't remember about that. It is customary, I believe, to have deeds of release acknowledged before a competent officer.

X Q. 155. After that release was signed by you and Stickney and acknowlegment certified to by notary, what did you do with it?

A. I think counsel for complainants assumes that which I have not said.

X Q. 156. What assumption do you allude to?

A. I allude to the assumption of the notary certificate to my and Stickney's signatures. I have given you my best remembrance on each of the points and questions asked relating to this release, and you must frame your questions to what I have already stated.

X Q. 157. You and Stickney both signed the release, did you not?

(Objected to by Mr. Elliot.)

A. I cannot answer more definately than I have. The best evi-

397 dence of the signatures, acknowledgements and everything pertaining to the release is the paper itself; and if it is possible through any exertion of mine to produce it I shall file it in this cause, as I have already stated.

X Q. 158. Did you not sign the release described in the bill as Complainants' Exhibit No. 3?

A. I decline most positively to answer any questions relating any further to this deed of release.

X Q. 159. After that release was executed, did you ever have it in your possession?

(Objected to by Mr. Elliot.)

A. I can answer nothing further about the release, as I have given you all the information and my best remembrance touching it.

(Counsel for complainants reserves the right at the close of the session to have these questions certified to the court for its disposition on a motion to compel answers.)

X Q. 160. Examine the three papers now shown you, being the original notes secured by the trust of January 1st, 1875, described in the 3rd paragraph of the bill, and state in whose handwriting are the last two

398 endorsements of interest thereon, to wit, January 8th, 1876, and July 15th, 1876? (Counsel handing witness the papers referred to.)

A. The first endorsement is in the handwriting of Mr. Seufferle, of Jackson Brother & Co., and the last two are in my handwriting.

X Q. 161. Who held those notes when you paid that interest; and where did you pay it?

(Objected to by Mr. Elliot.)

A. Jackson, Brother & Co. held the notes, and I paid the interest to Mr. William B. Jackson, either in my office or in the office of his firm, I don't remember exactly which, as he brought the notes to me sometimes.

X Q. 162. Was not the interest on these notes paid on the several dates of the endorsements thereof on the notes?

A. Not always.

X Q. 163. How did you pay that interest?

A. I don't remember how the instalment due January 1st, 1876, was paid, but I think the last instalment was paid, as I have said, by a draft on the Southwark Bank of Philadelphia.

X Q. 164. Mr. Williams, in his testimony, says that previous to the negotiations of the five thousand dollar loan of September, 1876, he had made several loans through you; please state what was the character
399 of the loans you had placed for him prior to the one of September, 1876.

(Objected to, as no reference is made in the direct testimony to any transaction by Mr. Williams, except the one involved in this suit, and this witness cannot be cross-examined as to the subject-matter of Mr. Williams' deposition, unless it is done for the purpose of contradicting this witness or contradicting Mr. Williams, and you have laid no foundation for that.

Witness asks his counsel: Shall I answer?

Counsel says he has some hesitancy in instructing a witness not to answer, as it may appear that there is something in the case that he desired to conceal, which is not the fact, but this testimony is clearly incompetent and inadmissible.)

A. I think eighteen or twenty thousand dollars.

X Q. 165. Please state how Mr. Williams knew of this five thousand dollar loan?

A. Whenever a loan was offered, where I thought the security and the men were good, I generally would notify my friends or those with
400 whom I was doing business, or any one whom I thought likely was able and desired to make an investment, that I had such a place to invest money, and, if they thought proper, they could accept the loan; the first one who notified me of his acceptance was generally the one to whom the loan was given.

X Q. 166. Did you inform Mr. Williams of this loan verbally or by letter?

A. I do not remember which.

X Q. 167. Did you have any correspondence whatever with him on the subject?

A. I do not remember, but I think that the negotiation was commenced and closed by verbal communications.

X Q. 168. Did you not write to Mr. Williams in relation to this loan, and did you not keep a press copy of your letter?

A. If I wrote to him I certainly kept a press copy.

X Q. 169. Have you a press copy of letters written by you to your customers, in relation to the negotiations of loans?

A. I have.

X Q. 170. You state in your answer, "That some time in June, 1876, he, defendant Sweet, desired to effect a loan upon this property from
401 the defendant Williams." What time in June was it that he so desired it, the early or latter part?

A. I think the early part.

X Q. 171. Had Mr. Sweet ever met Mr. Williams at that time, or did he know him, to your knowledge?

A. I have stated in my previous testimony that the negotiations for the loan were pending some months before finally consummated, six or eight months. The loan could not be consummated in the early stage of the negotiations, as William Stickney, one of the trustees in the trust of January, 1875, was in Maine, and it was impossible to have the release properly fixed. Sweet offered to make the journey to Maine and see Mr. Stickney in person and have the paper fixed; he was so anxious that the loan should be closed.

X Q. 172. Had Mr. Williams agreed to take the loan at this time?

A. I think not; that is at the early stages of which I speak. I think another customer of mine would have taken it at that time, but owing to the delay I invested the money elsewhere.

X Q. 173. Then I understand you, that were it not for the ab-
402 sence of Stickney the negotiations of this loan from Williams would have taken place in June, 1876?

A. I don't state that it would; it might have.

X Q. 174. You had spoken to him on the subject, had you not?

A. As I have stated, I think so, or some one else.

X Q. 175. Did you not request Mr. Williams to hold the money until the release could be obtained?

A. I never requested or asked a customer to hold his money one minute. If papers could not be closed immediately or within a short time the money was never held, as there are so many things in real-estate transactions that are uncertain, and knowing this I did not request my customers to hold money for the purpose of investing in real estate, but if any other loans were offered they were closed.

X Q. 176. Was Mr. Williams prepared to pay the money and close the negotiations if this release had been obtained before it was?

(Objected to by Mr. Elliot.)

A. I know nothing about that.

X Q. 177. Did you not, after you first spoke to him about this
403 loan, inform him why it could not be closed immediately after you learned that Mr. Stickney was absent from the city?

A. I think not, as I never made explanations if they could be avoided; I substituted other loans or securities equal to them which could not be obtained.

X Q. 178. Was not the fact that this loan could be negotiated by you from Williams communicated by you to Mr. Sweet, and was not that the first knowledge which Sweet had of Mr. Williams' willingness in the premises?

A. I cannot answer.

X Q. 179. Will you swear that it was not or that you did not tell Sweet in the first instance that you could negotiate this loan through Mr. Williams?

A. I have given my best recollections.

X Q. 180. Can you state, after you first met or consulted Williams in relation to this loan, when you and he next talked about it?

A. I cannot.

X Q. 181. Did you and Williams ever personally inspect the premises in question together, prior to the close of those negotiations?

(Objected to by Mr. Elliot.)

A. I think so.

404 X Q. 182. Did you ever, with Williams, before he handed you his five thousand dollar check, go into the house No. 437 M street northwest together, for the purposes of inspection?

(Objected to by Mr. Elliot.)

A. Yes.

X Q. 183. When was it?

(Objected to by Mr. Elliot.)

A. I cannot remember the exact date.

X Q. 184. What month was it in?

(Objected to by Mr. Elliot.)

A. I think in September, 1876.

X Q. 185. Did you or Williams ring the bell preparatory to entering the house?

A. That I cannot say.

X Q. 186. Who let you in?

A. That I cannot say.

X Q. 187. Into how many rooms did you go?

A. I don't think that we went into any of the rooms. I think that we simply went into the passage of the house, looked into the parlors and dining-room just to see the general idea, as I was not in the habit of obtruding upon the privacy of occupants.

X Q. 188. Please state who met you at the door, if any one, on this occasion, and what you said, if anything, to any one in that house at that time.

(Objected to by Mr. Elliot.)

405 A. That I cannot remember.

X Q. 189. Will you say that you ever went into this house of Mr. Sweet's with the defendant Williams prior to the handing to you of the five thousand dollar check?

A. I have stated that I did.

X Q. 190. What hour in the day was it?

A. That I cannot remember. I think that we simply looked into the hall of the house, as I have stated, and I went into my father's house, next door to Sweet's, and I think he went to his sister's, a few doors off.

X Q. 191. Did he also go into your father's house?

(Objected to by Mr. Elliot.)

A. I think not.

X Q. 192. Had you not at that time a night-key that would open the door of Mr. Sweet's house?

A. I did not; that is, I don't think I did.

X Q. 193. Please state how long before this check was handed to you by Williams that the note of five thousand dollars and trust to secure i of September 27th, 1876, was drafted.

A. I do not remember. I think only a short time.

X Q. 194. Examine the trust mentioned, being Exhibit J. N.
406 O., No. 2, and state if that trust was not written subsequently to the draft of the paper.

(Objected to by Mr. Elliot.)

A. It may have been a day or two subsequent to the draft.

X Q. 194. I wish you to state particularly, as near as you can, the time you first approached Williams, or spoke or wrote to him, in relation to this five thousand dollar loan, and all the circumstances connected therewith, from that time to the payment and delivery of the five thousand dollar check by him to you.

A. I have tried to state fully all the circumstances, as they are evidenced by my answers to your questions. I cannot state minutely every act or circumstance, for the loan was simply negotiated as a large number of other loans were which passed through my hands. He accepted the security and made his check to the firm of A. Davis & Son, and took the copy of the abstract and went off; after he had been gone some fifteen or twenty minutes I discovered the note for five thousand dollars, drawn by Addie M. Sweet, dated September 27th, 1876, was lying on the
407 floor near my desk. I think I went right to Riggs & Co. to find Mr. Williams so as to hand him the paper, but did not see him there, but found him in the barber-shop under Williard's Hotel, and I think there handed him this note; that is, the note of September 27th, 1876, for which the check was given.

X Q. 195. After the preparation of the papers pertaining to this transaction of September 27th, 1876, with Williams, did he examine them to your knowledge?

(Objected to by Mr. Elliot.)

A. I cannot state; his dependence seemed to be in Mr. Ashford.

X Q. 196. What day was this negotiation with Williams finally closed?

A. WITNESS (referring to a book). I do not remember distinctly; it was near the 27th or 28th—somewhere near there—of September.

X Q. 197. From the time you first saw Williams in relation to this transaction, up to the time you received the check and handed him the note, had you and he ever talked the matter over, or had he, in your presence, ever examined any papers; if so, state what occurred, and the character of the papers?

A. I do not think he examined any papers; he desired simply
408 to have Mr. Ashford's abstract that there was no lien of record upon the property.

X Q. 198. Please state what took place in your office between you and Williams when he called to close the matter of this loan.

(Objected to by Mr. Elliot.)

A. Nothing occurred, I think, further than that which I have already stated. I think he simply took the abstract, looked at it, and as I told him I desired to retain the original, he took a copy, made the check payable to A. Davis & Son, and departed, leaving the note behind, as I have stated.

X Q. 199. Prior to the handing to you of this five thousand dollar check on that day, had Williams examined the deed of trust to yourself and Elliot, to secure his five thousand dollar note?

(Objected to by Mr. Elliot.)

A. I don't think he did, as it was part of the duty of the examiner of titles to report if any defect existed in the deed of trust, and Mr. Williams did not take it upon himself to make this examination; he generally required the deeds of trust to be recorded, and then had the certificate of title to cover it, and if there was any defect in the trust it was the duty
409 of the examiner to note it in the certificate, and he did not vary this rule I don't think.

X Q. 200. Prior to his handing you this five thousand dollar check, did he read Ashford's certificate of title in your presence?

(Objected to by Mr. Elliot, as witness has already answered that question.)

A. I have given my best remembrance; I don't know whether he studied the abstract; I think he simply took it and glanced over it, as I have stated.

X Q. 201. When Williams called, on the day he gave you the check, had the release and the deed of trust been recorded?

(Objected to by Mr. Elliot.)

A. I think so.

X Q. 202. Who placed it on record?

(Objected to by Mr. Elliot.)

A. What do you mean by it?

X Q. 203. The deed of trust?

A. I believe that I did.

X Q. 204. Who placed the deed of release from yourself and Stickney to Addie M. Sweet on record?

(Objected to by Mr. Elliot.)

A. I don't remember, but suppose the records will show.

410 X Q. 205. Why do you suppose the records will show who placed it on record?

(Objected to by Mr. Elliot.)

A. It is the duty of the recorder of deeds to mark it and put a record of the parties from whom the deeds are received and by whom they are withdrawn; whether this is practised by our recorder or not, I do not know.

X Q. 206. Will you swear that you did not take that release at the same time that you took the trust to the record office for record?

A. I will not. If counsel for complainants are desirous to have this question answered "yes" or "no," if they will give me time to look up data and reflect I will answer positively either one way or the other.

X Q. 207. What data do you expect to find upon reflection?

A. That I cannot state.

X Q. 208. Please examine the paper marked "Exhibit S. T. W., B.," and state whether you had that in your possession on the day that Mr. Williams gave you this five thousand dollar check?

A. I did.

X Q. 209. Do you know when, where, and by whom the last portion of that certificate following the date of September 14th, 1876, was made?

(Objected to by Mr. Elliot.)

411 A. I think it was made by Mr. Mahlon Ashford on the 28th of September, 1876, in the office of the recorder of deeds for the District of Columbia; that is my best remembrance.

X Q. 110. Were you present?

(Objected to by Mr. Elliot.)

A. I think I had left the room to look at the judgment records in the clerk's office, to see that no judgment had been entered against Sweet between the dates of September 14th & 28th.

X Q. 111. After that was written did you receive it from Mr. Ashford?

(Objected to by Mr. Elliot.)

A. I cannot state positively whether I left the clerk's office and went to my office and sent my clerk to get the paper from Ashford or not.

X Q. 212. Who handed that paper to Mr. Williams, if it was handed to him, on the 28th of September, 1876?

(Objected to by Mr. Elliot.

Witness asks his counsel to state the grounds of his objection, which is not done.)

A. I cannot state positively, but I think I left my office and left the paper with my clerk, with instructions to hand the abstract to Mr. Williams when he should come into the office, so that he could examine
412 and make any inquiries that he might deem best, and I cannot say whether he did or not.

X Q. 213. Examine the letters and figures in lead-pencil on the outside of this exhibit, in the left-hand upper corner, to wit, "Fee, $10.00," and state in whose handwriting it is.

A. That is in my handwriting.

X Q. 214. Who paid that fee?

(Objected to by Mr. Elliot.)

A. I think I did.

X Q. 215 To whom?

(Objected to by Mr. Elliot.)

A. Mahlon Ashford, I think.

X Q. 216. After this paper S. T. W., B., was shown to Williams, as you state, what became of it?

(Objected to by Mr. Elliot.)

A. I do not remember distinctly whether Mr. Williams took it away with him and returned it to me a day or so afterwards, or whether I simply gave him the copy and placed the original immediately in my safe.

X Q. 217. From the time you placed this paper in your safe up to the time it was left by you for the purposes of testimony in this cause, was it ever out of your possession?

(Objected to by Mr. Elliot.)

A. I think not; it may have been, but I don't remember in any instance.

413 X Q. 218. Examine the lead-pencil memorandum on the face of this exhibit, to wit, "M street, 439," and tell me if you know who made that memorandum, or in whose handwriting it is.

(Objected to by Mr. Elliot.)

A. I don't know who made the memorandum nor do I know in whose handwriting it is, but if counsel for complainants wishes to place me upon the stand as an expert, I think I can find out.

X Q. 219. Prior to your now examining that memorandum, did you ever see that before?

(Objected to by Mr. Elliot.)

A. Never.

X Q. 220. Was it on there at the time that you delivered it for the purposes of this testimony in this cause?

(Objected to by Mr. Elliot.)

A. That I cannot say, as I have no remembrance whatever touching that pencil memorandum.

X Q. 221. Please state what consideration, if any, there was, for the execution and delivery of the note for five thousand dollars of September 27th, 1876; the trust marked "Exhibit J. N. O., No. 2," given to secure it; the six notes and the trust described in the 7th paragraph of the bill other than the cancellation of the notes of January 1st, 1875?

(Objected to by Mr. Elliot, upon the ground that there has been no testimony that the consideration for the execution of that five thou-
414 sand dollar note was as cancelation of the other notes; nothing was said in the direct examination as to the notes secured by the other was by trust of the same date, other I mean than Exhibit J. N. O., No. 2, and for the purpose of saving time, as there has been too much latitude already in the course of this examination, I instruct the witness not to answer any cross-interrogatory touching this point until it is carried before the court to determine as to how far the counsel can go, and for no other purpose whatsoever.

(Examiner asks the witness if he will answer the question at request of counsel for complainants, and witness refuses to answer.)

X Q. 222. Have you brought with you the bill book, requested at our last session?

A. I have; I have brought all the papers requested excepting the deed of release, which I could not find.

X Q. 223. Will you leave that here for the purposes of inspection?

A. No, sir.

X Q. 224. Did you keep an account with the defendant Sweet on your books?

(Objected to by Mr. Elliot.)

A. I think not; most of my accounts were kept by notes, either secured or of hand, which notes evidenced the amount of indebtedness a. all times.

415 X Q. 225. Will you swear that you have not a book in your possession showing an account between you and the defendants Sweet, or either of them?

(Objected to by Mr. Elliot.)

A. I will examine my books, and if any such account can be found, counsel for complainants are welcome to the book.

X Q. 226. Have you not shown to defendant Sweet, since the commencement of this cause, a book containing your acco'nt with him?

(Objected to by Mr. Elliot.)

A. No, sir.

(Counsel for complainants requests witness to produce this press-copy book of which he has spoken in his testimony to-day at the next hearing, for the purposes of inspection.

Witness asks counsel for complainants if he desires any more paper.

Counsel in answer states that he desires him to furnish his bank book

with the Metropolis Savings Bank and Riggs & Co., bankers in this city; and his book of abstracts of titles.)

Adjourned until Friday, May 10th, at one o'clock p. m.

416 FRIDAY, *May 10th*, 1878.

Met pursuant to adjournment, at one o'clock p. m.

Present, Messrs. Edwards and Elliot, of counsel; and Mr. C. J. Sweet and Charles T. Davis, witnesses.

Continuation of cross-examination of Charles T. Davis.

Examined by Mr. EDWARDS:

X Q. 226. Examine the paper now shown you, marked "Exhibit J. N. O., No. 8," filed March 30th, 1878, which reads as follows: "Washington, D. C., Aug. 23rd, '77. Rec'd of R. K. Elliot, trustee, the sum of thirty-five dollars ($35), for insurance on No. 437 M street, northwest; also, twelve dollars and fifty cents ($12.50), interest on taxes for the year 1876, on lot 49, square 513, paid by me October 3rd, 1776;" and state who wrote it, when it was written, and in whose handwriting is the signature thereto "Charles T. Davis."

(Objected to by Mr. Elliot.)

A. It was written by my clerk, Sidney Y. Smith, esq.; I don't remember just when it was written, probably that of the date it bears; the signature is mine.

X Q. 227. What policy of insurance does this receipt refer to?

(Objected to by Mr. Elliot.)

A. The receipt refers to simply one policy of insurance.

417 X Q. 228. But what, I say?

A. The receipt was intended to cover all insurance paid by me up to the 23rd of August, 1877, on Sweet's property. It included the policy of insurance filed in this suit and a policy of insurance, which was made after the Sweet-Williams five thousand dollar loan, I think.

X Q. 229. Was there a policy of insurance taken out on this property at the time of the negotiation of the five thousand dollar Williams loan of September, 1876?

(Objected to by Mr. Elliot.)

A. I think the policy of insurance was not taken out for a few days after the Williams loan was closed.

X Q. 230. In what company was this insurance placed, about the time of the five thousand dollar Williams loan?

(Objected to by Mr. Elliot.)

A. I don't remember.

X Q. 231. Was there not a policy of insurance on this property taken by the Philadelphia Fire Insurance Company of Philadelphia, Pennsylvania?

(Objected to by Mr. Elliot.)

A. It may have been.

X Q. 232. Do you know of such a company?

(Objected to by Mr. Elliot.)

418 A. And as I have stated before to complainants' counsel, I think it was in that company.

X Q. 233. Were you not the Washington agent for that company?

(Objected to by Mr. Elliot.)

A. I was.

X Q. 234. I mean at the time of the negotiation of this five thousand dollar loan by Mr. Williams.

(Objected to by Mr. Elliot.)

A. Nothing has been said in my direct examination about any insurance company, and I refuse to answer any questions relating thereto.

X Q. 235. Do you recollect or know to whom the loss provided for by this policy of insurance was made payable?

(Objected to by Mr. Elliot.)

A. I shall answer no questions touching that policy; the policy is the best evidence, and should be produced and filed.

X Q. 236. Did you not, as the agent of the Philadelphia Fire Insurance Co., place an insurance on the property described in this bill; and was not the loss, if any, made payable to yourself and cotrustee, R. K. Elliot, under the deed of trust of September 27th, 1876, and was not that policy delivered by you to the defendant Williams?

(Objected to by Mr. Elliot.)

419 I have nothing further to say in relation to the policy.

X. Q. 237. Have you ever seen such a policy of insurance?

(Objected to by Mr. Elliot.)

A. I decline to answer questions on that strain.

X. Q. 238. The paper marked J. N. O., No. 8, which has been read to you, acknowledges a receipt by you of $12.50, interest on certain taxes paid by you October 3rd, 1876; are not the taxes mentioned in this paper the same as reported unpaid by Mr. Ashford in his certificate of title of September 14th, 1876, filed with his deposition?

(Objected to by Mr. Elliot.)

A. I think so; I have the check which I gave Mr. Cook in payment of the taxes, and, if necessary, will file it; at least, I think I have the check; I may have given it to Mr. Elliot at the time of the sale.

X. Q. 239. At or about the time of your negotiations of the five thousand dollar Sweet loan of September, 1876, you were doing a large business in promissory notes and real-estate transactions on your own account, and others, were you not?

A. Yes, sir.

X. Q. 240. When you answered my questions as to the ag-
420 gregate amount of loans made by the defendant Williams, through you, to the negotiation of the five thousand dollar Sweet loan of September, 1876, you had a book in your hand from which you made the calculations; does that book show the entries of loans made by you for your customers?

(Objected to by Mr. Elliot.)

A. It contains memoranda of nearly all of them.

X. Q. 241. Have you that book now with you?

A. Yes.

X. Q. 242. Please turn to the page showing the loans made, through you, by Mr. Williams, and tell me what is the aggregate of loans he made through you since and including the five thousand dollar Sweet loan? You have given the aggregate before.

(Objected to by Mr. Elliot, nothing having been said in the direct examination about it, and it being immaterial to the issue in this cause as to

how many loans were made by the defendant Williams, through this witness, and is incompetent.)

A. I refuse to give any information since the negotiation of the Sweet loan, or my release to Mr. Williams.

421 X Q. 243. Turn to the page of this book and state what is the aggregate amount of loans made by Williams, through you, including the Sweet loan.

(Objected to by Mr. Elliot.)

A. I have given my best remembrance of the amount of loans before the Sweet loan, and you can add them up, and you can tell the result as near as I can give it.

X Q. 244. You based your estimate of the aggregate of eighteen (18) or twenty (20) thousand dollars, did you not, from an inspection of this book?

(Objected to by Mr. Elliot.)

A. I did not.

X Q. 245. Did you not have it in your hands, and look into it at the time you were asked that question?

(Objected to by Mr. Elliot.)

A. I had it in my hands about the time the question was asked.

X Q. 246. Did you not have it open when that question was asked you?

(Objected to by Mr. Elliot.)

A. I did; I had it open when the question was asked me.

X Q. 247. Does that book contain any memorandum or entry of this note for five thousand dollars, to the order of Williams, of September 27th, 1876?

(Objected to by Mr. Elliot.)

422 A. Yes.

X Q. 248. Please turn to the entry and read it.

A. I refuse to read anything from the book touching the loan. If counsel for complainants will obtain an order from the court, they are welcome to a copy of the entry; that is, if I am obliged to give it.

X Q. 249. Will you allow me now in your presence and in the presence of your counsel, for the purposes of this cause, to examine the entry in this book of this five thousand dollar note?

A. I will, provided it is made no part of the testimony in this cause, and that no memorandum or note, or copy thereof, be furnished to the examiner until after the order from the court has been obtained.

X Q. 250. Will you now permit the examiner to make a copy of the entry in this book pertaining to this note?

A. I will not, because it is not evidenced and has no right to be brought out in this cross-examination. If, after consultation with counsel, I am advised, I shall do as counsel for complainants have requested.

X Q. 251. Have you brought with you the books and papers heretofore requested to be furnished?

423 A. I have brought all the books and papers that have been requested, or as many as I could find.

X Q. 252. Please describe them.

A. Note and bill book; bank book with Riggs & Co.; bank book with Metropolis Savings Bank; ledger referred to; abstract book; eighteen hundred dollar note; five thousand dollar note, and the memorandum letters from

Sweet and Williams relating to the five thousand dollar loan. The deed from the trustee to Blackwood I could not find; I think it is at the recorder's office. The book containing press copies of letters contains nothing in anywise bearing on the negotiations of the loan either with Williams or Sweet.

X Q. 253. Will you permit me to inspect the papers and books referred to, so far as they pertain to the transaction of September 27th, 1876, in relation to this Williams loan, now, in the presence of yourself and your counsel?

A. I will not, until you obtain an order from the court, as I don't think I am compelled to furnish any new evidence not brought out in my direct examination. If the court so directs, counsel for complainants can inspect and copy any or all matters pertaining to this loan.

424 X Q. 254. When you received the five thousand dollar check of September 28th, 1876, from the defendant Williams, what did you do with it?

A. I gave it to my clerk with instructions to deposit it in the bank of Riggs & Co.

X Q. 255. Was it so deposited; and, if so, to whose credit?

A. The note was made payable to A. Davis & Son.

X Q. 256. You don't understand me.

A. And afterwards deposited to my individual account, as the firm of A. Davis & Son had no partnership bank account.

X Q. 257. I now hand you the original deed from yourself and R. K. Elliot, trustees, to the defendant Blackwood, described in the bill; please tell me in whose handwriting is that deed, except what is printed.

(Objected to by Mr. Elliot.)

A. In the handwriting of Sidney Y. Smith.

X Q. 258. Where was that deed signed and executed?

(Objected to by Mr. Elliot.)

A. I think in the office of Mr. R. K. Elliot.

X Q. 259. In whose presence?

(Objected to by Mr. Elliot.)

A. On the 23rd of August, 1877, in the presence of William Pierce Bell, a notary public.

X Q. 260. Was not the defendant Samuel T. Williams then present?

425 (Objected to by Mr. Elliot.)

A. You had better ask him.

X Q. 261. I asked you if he was not?

A. I don't remember.

X Q. 262. Was not that deed executed in the office of Mr. R. K. Elliot on the day the settlement and sale by you and him of this property, as stated in the bill, was made, and was not Mr. Samuel T. Williams present?

(Objected to by Mr. Elliot.)

A. Do you mean the deed which you have just sent to the record office for, and which they have just sent down to you, and which I have inspected?

X Q. 263. I refer to the deed that you have last been interrogated about.

A. Which is the deed I mean.

X Q. 264. And you are requested to endeavor to answer my question, if it is in your power.

A. I think not.

(Counsel for complainants here requests that the cross-examination be suspended, and that the examiner certify the questions heretofore asked the witness, and which he refuses to answer, as well as all of his deposition heretofore taken, for its determination on a motion to require
426 him to answer and to produce the books and papers mentioned for the purposes of inspection; which the examiner does accordingly.)

IRWIN B. LINTON,
Examiner in Chancery.

Adjourned until Tuesday, May 13th, at one o'clock p. m.

TUESDAY, *May 13th*, 1878.

Met pursuant to adjournment, at one o'clock p. m.

Present, Messrs. Edwards and Charles A. Elliot, of counsel, and Edwin J. Sweet and Charles T. Davis, witnesses.

Continuation of cross-examination of Charles T. Davis:

Examined by Mr. EDWARDS:

The questions certified to the court having been argued before the court by counsel and an order passed thereon, and the same delivered to the examiner, the said order was shown to both the witness and his counsel, and read by them, and the purport thereof explained by the examiner, whereupon the witness proceeded to answer the interrogatories propounded by counsel, and embraced in said order of court, as follows:

X Q. 265. Have you now with you the five thousand dollar
427 note of September 27th, 1876, payable to the order of Samuel T. Williams, mentioned heretofore in your testimony?

A. Yes.

X Q. 266. Please produce that now for the purpose of evidence in this case.

(Witness produces the paper referred to, and the same is filed with the examiner, and marked Exhibit J. B. L., No. 2.)

(The introduction of the paper as evidence in this cause is objected to by Mr. Elliot as well as any other paper that may hereafter be sought to be introduced in this manner as evidence, except such as may have been referred to by the witness in his direct examination.)

X Q. 267. Have you with you the note of Addie M. Sweet and Edwin J. Sweet, dated January 1st, 1875, payable in one year after date, described in your former testimony; if so, please produce it?

(Witness produces the paper referred to, which is filed and marked Exhibit J. B. L., No. 3.)

X Q. 268. Have you with you the bill-book showing loans negotiated with your customers, referred to in your former testimony?

A. I have.

X Q. 269. Please turn to the page in that book showing the
428 loans placed by you for the defendant Williams so that I may inspect it.

(Witness complies, and states, upon inspection, that the five thousand

dollar note just introduced in evidence, and marked Exhibit J. B. L., No. 2, is entered in this book as loan number 1319.

The examiner, at the request of counsel for the complainants, makes a copy of this entry, and the copy is filed herewith, and marked J. B. L., No. 4.

Mr. Elliot objects to the introduction of this evidence.

X Q. 270. Examine the paper now shown you, being one of the original notes of January 1st, 1875, for $1,833.33, which has been before referred to, and being one of the notes secured by the trust of January 1st, 1875, to yourself and the defendant Stickney, and state in whose handwriting are the words and figures endorsed on the back thereof, to wit: "We hereby guarantee the payment of the within note without demand, notice, or protest. A. Davis & Son. January 4th, 1877."

A. Mine.

X Q. 271. You state that you took the release from yourself and the defendant Stickney to Addie M. Sweet, described in the bill, to the defendant Stickney. Where did you get that paper?

(Objected to by Mr. Elliot.)

429 A. I think my clerk handed it to me.

X Q. 272. When you got to Mr. Stickney's office, please state what occurred in respect to the execution of this release.

(Objected to by Mr. Elliot.)

A. He stated that he did not usually sign releases unless the notes were produced, marked "paid and canceled;" but that in this case I should hold the release until the notes were paid, or everything was all right.

X Q. 273. After that release was executed, if it was executed, what became of it?

A. I don't remember whether I gave it to Mr. Williams, or whether I recorded it among the land records. This is my best remembrance.

X Q. 274. That release purports to have been executed or acknowledged before the notary public, Jones, on the 19th of September, 1876; it further appears that it was recorded on the 28th of the same month. Between those days where was that paper?

(Objected to by Mr. Elliot.)

A. In my safe, I think.

X Q. 275. Why did you not place it on record immediately after its execution?

(Objected to by Mr. Elliot.)

A. As I have before stated, Sweet was trying to negotiate the
430 loan with Jones, and the release was all ready, so as to be delivered whenever the transaction should be closed. He had directed me to have the release all ready in my possession, so as to deliver it at any time.

X Q. 276. When did you learn, if you found out that fact, why Jones could not place that loan?

A. I do not remember exactly, but Sweet was expecting, up to the time that the loan was closed with Williams, to place it through Jones.

X Q. 277. Then, I understand you, you cannot give the date that you first learned that this loan could not be placed through Jones?

A. I cannot. Sweet had made so many promises and so many efforts, none of which ever amounted to anything, to close the matter, that I took charge of it, as I have before stated, to do the best I could for him.

X Q. 278. At or about the execution and delivery to you of the Williams trust and note of September, 1876, did you not also receive from the defendants Sweet, or either of them, the six promissory notes and trust-deeds described in the 7th paragraph of the bill?

(Objected to by Mr. Elliot.)

A. I did.

X Q. 279. Did you make any entry of these six notes in this bill-book?

(Objected to by Mr. Elliot.)

431 A. I did; and it follows immediately after the Williams entry for five thousand dollars.

Copies of the entries of these six notes are now made by the examiner, and follow immediately after and on the same paper with the entry of the Williams note before referred to, and which is marked Exhibit J. B. L., No. 4.

(Objected to by Mr. Elliot.)

X Q. 280. What was the amount due on the notes secured by the trust of January, 1875, to yourself and Stickney, described in the bill, at the time and the date of the negotiations of the Williams note and the execution and delivery to you of the six notes described in the 7th paragraph of the bill?

A. I think it amounts to the same as this evidenced by the Williams note and the six notes mentioned, being amount due under the original trust and interest to September 27th, 1876.

X Q. 281. After the execution and delivery to you of these six notes of $530.33 each, what became of them?

(Objected to by Mr. Elliot.)

A. I put them in my safe, and kept them there until the next day.

X Q. 282. Then what became of them?

(Objected to by Mr. Elliot.)

432 A. I then took them down to Mr. William B. Jackson.

X Q. 283. What became of them then?

(Objected to by Mr. Elliot.)

A. I told Mr. Jackson that I had closed or changed the matter of the loans of Sweet, and that I would give him the amount due by the notes of Sweet to that date.

X Q. 284. Did you pay him?

A. He stated that the interest had been paid up to the last instalment, or up to that date, and that he did not wish to bother about the matter only as the notes came due, and stated that I could make any disposition of the Sweet notes that I might deem best.

X Q. 285. Which notes do you refer to?

A. These six Sweet notes. He said that I must be prepared to pay the notes as they became due—that is, the notes held by his firm, being the notes of January 1st, 1875, decribed in this bill, and the interest thereon.

X Q. 286. Do you hold any of these notes to-day?

(Objected to by Mr. Elliot.)

A. I do.

X Q. 287. Which ones?

(Objected to by Mr. Elliot.)

A. The last three, I think.

433 X Q. 288. Where are the other three, if you know, or did you ever make any disposition of them?

(Objected to by Mr. Elliot.)

A. The first three are in the Citizens' National Bank, I think.

X Q. 289. Who placed them there?

(Objected to by Mr. Elliot.)

A. I think I did.

X Q. 290. With what purpose?

(Objected to by Mr. Elliot.)

A. I did not receive any money on the notes from the Citizens' National Bank; they were simply left there as collateral security to an unsecured note which they had taken, and on which I was endorser, and these notes were simply left for security for an extension of ninety days.

X Q. 291. When you left those three notes with this bank, as collateral security, as you stated, did you receive any money from the bank?

(Objected to Mr. Elliot.)

A. Not a penny.

X Q. 292. How much money was obtained on the original loan, or discount by the bank on the notes which had been previously given, and upon which, as you state, you were endorser?

A. One thousand dollars.

434 X Q. 293. Who got that money?

(Objected to by Mr. Elliot.)

A. The Citizens' Bank got it.

X Q. 294. The money?

A. They got it.

X Q. 295. Was not the first discount of the one thousand dollar paper you refer to, on which you were endorser, for your benefit?

(Objected to by Mr. Elliot.)

A. No, sir; it was simply to pay a note that was due that day to the bank.

X Q. 296. Who owed the money?

(Objected to by Mr. Elliot.)

A. I don't remember, but I think I was responsible as the second or third endorser.

X Q. 297. Who paid for the recording of the release from you and Stickney to Sweet, and the trust from Mrs. Sweet and her husband to you and Elliot, which were left for record September 28th, 1876, and described in the bill?

A. Sweet; he gave me the money to pay for the recording and acknowledging.

X Q. 298. When?

A. The same day that they were recorded, I think.

X Q. 299. Will you swear that on the day that those deeds were placed on record by you, as you state, that Sweet gave you any money to record them?

435 A. I do; either that day or the day before.

X Q. 300. How much did he give you?

A. I think he handed me ten dollars, out of which the expenses of the transfer of the loan were to be paid.

X Q. 301. Where was this money paid to you by Sweet for this purpose?

A. At my desk in my office, 615 7th street.

X Q. 302. Who was present?

A. I think my clerk and father.

X Q. 303. Who was present in your office when Williams called to close negotiations of this five thousand dollar loan?

A. There were a great many people in the office; I think my clerk, two or three real estate agents, my father and brother, and I think some others; I was very busy that day, I know.

X Q. 304. At your last examination you had an envelope in your possession containing certain papers in relation to this transaction; will you please allow me to inspect them?

(Witness hands the counsel the papers referred to.)

X Q. 305. Haven't you a paper there from Williams?

A. I have a letter from Mr. Williams, part of which bears on this case. If the counsel for complainants will simply make that part of the letter evidence in this cause, they are welcome to it.

436 (The paper referred to is handed to the counsel for complainants, who states that it relates to the interest on the Sweet loan after it was negotiated.)

X Q. 306. Have you any memorandum in writing, or letters, from the defendant Williams or Sweet in relation to the negotiation of this loan of five thousand dollars of September, 1876, prior to the delivery to you by Williams of the five thousand dollar check of September 28th, 1876?

A. I have not.

X Q. 307. Did you ever have any?

A. Never had any, I don't think.

X Q. 308. You said in your testimony-in-chief that you remember about five minutes after you had negotiated the loan with Mr. Williams you received a telegram from Philadelphia from parties anxious to make the loan for the five thousand. Who were those parties?

A. J. T. Audenried.

X Q. 309. Have you that telegram?

A. I think I have.

X Q. 310. Have you it with you?

A. Not with me.

X Q. 311. Through what company was it sent?

A. Western Union, I think, or the Atlantic and Pacific; I don't know exactly which.

(Counsel for complainants requests the witness to produce this telegram at the next session.)

437 Witness says: It shall be done.

X Q. 312. Are there any entries in this bill book of the notes of January 1st, 1875, that you received from Sweet?

A. Yes.

X Q. 313. Does that entry show when the notes of January 1st, 1875, were delivered by you to the complainants—when?

A. It does not state when they were delivered, but there is an indistinct pencil memorandum which shows why they were delivered.

X Q. 314. When was that memorandum made in lead pencil that you speak of?

A. It was made at the time.

X Q. 315. When was that?

A. Of the last delivery of the twenty-five hundred dollar note to Jackson, Brother & Co.

X Q. 316. In whose handwriting is it?

A. It is in my handwriting.

X Q. 317. Did you make it?

A. I did.

X Q. 318. You remember that distictly. Has not this lead pencil memorandum that you speak *to* been attempted to be erased by some one, or does it not have that appearance?

A. It does; I cannot state whether the memorandum was erased or whether it was at first indistinctly made and since worn out. The
438 book was very much used, and sometimes when it would be encumbered with memoranda I would erase anything that I deemed best.

X Q. 319. What was the date, so far as this book indicates, that you received these four notes from the Sweets?

A. (WITNESS, reading from the book referred to:) On the 14th day of January, 1875.

X Q. 320. Is there any book, or have you any written memorandum of any kind, or have you in your mind any circumstance that can indicate in any manner at what time you delivered these four notes of January, 1875, to the complainants?

A. I kept no account of the time when notes were delivered, as they were constantly leaving my hands, sometimes within a few minutes after I obtained them, and sometimes in a week, or month, or longer.

X Q. 321. At the time of the negotiations of this Williams loan by you, of September, 1876, did you show Williams a plat of the property?

A. I did not; I don't think. I had a plat in my office, but I don't remember whether I showed it to him or not.

X Q. 322. What papers, if any, did you ever show Mr. Williams in relation to or connected with this transaction of September, 1876?

439 A. I showed him the abstract, and may be other papers, but I don't remember just now. He required the deed of trust, release, etc., to be recorded, as I have stated, and the abstract brought down to cover them, and when he saw the abstract he closed the negotiations.

X Q. 323. Where was the matter of the settlement of the sale by you and the defendant, Elliot, of July 17th, 1876, under the trust dated September 27th, 1876, as described in the proceedings, made?

(Objected to by Mr. Elliot.)

A. In the office of R. K. Elliot, esquire.

X Q. 324. State what occurred in relation to that settlement, and who was present?

A. Mr. Elliot and myself executed the trustee deed to Blackwood and went over the accounts, and I gave him some vouchers that I had, and I made a memorandum statement at that time, which I prepared.

X Q. 325. Have you that statement with you?

A. I have.

X Q. 326. Will you produce it?

A. I do.

(Paper referred to here produced, filed and marked as Exhibit J. B. L., No. 5.)

(Objected to by Mr. Elliot.)

WITNESS. The five thousand dollar note was surrendered by Mr. Williams, and I don't remember whether Mr. Williams was present or
440 not he may have been, and I think Mr. Creswell, of the Citizens' National Bank, was also present.

X Q. 327. Did you not, on the day of this settlement, endorse over the five thousand dollar note given by Blackwood, as the balance of the purchase-money on account of this sale, and deliver it to the defendant Williams?

A. I think I did, or somewhere thereabouts.

X Q. 328. Was Blackwood present at this settlement?

(Objected to by Mr. Elliot.)

A. He was not; I acted for him.

X Q. 329. Did you and your co-trustee, Elliott, ever, in fact, deliver to the defendant Blackwood, into his actual possession, the deed from you and Elliott to him as the purchaser of this property at this sale?

(Objected to by Mr. Elliot.)

A. I did. I delivered the deed into the hands of Blackwood personally.

X Q. 330. When?

A. I don't remember just when.

X Q. 331. Did you on the day that it was executed?

(Objected to by Mr. Elliot.)

A. My impression is I gave him the deed immediately after it was executed. He examined it, and I think he gave it to me to be recorded.

X Q. 332. Where was Blackwood at this time?

(Objected to by Mr. Elliot.)

441 A. I think he was at my office, only a few minutes' walk from the place where the deed was executed.

X Q. 333. Will you state positively that after that deed was executed in the office of your co-trustee, Elliot, and before it was recorded, that Blackwood saw it.

(Objected to by Mr. Elliot.)

A. I do, positively.

X Q. 334. What time in the day this settlement take place in Elliot' office?

A. The settlement took place, I think, in the middle of the day, or somewhere about meridian, and the deed was recorded just before the office closed, I think.

X Q. 335. Have you not examined this deed against the protest of counsel for complainants, and from it obtained the hour when it was recorded?

A. I have not.

Cross-examination of witness here suspended until Thursday, next at one o'clock p. m., and adjourned until that time.

442 THURSDAY, *May 16th*, 1878.

Met pursuant to adjourment at one o'clock p. m. Present, Messrs. Edwards and Elliot, of counsel, and Charles T. Davis, witness.

Continuation of cross-examination of Charles T. Davis.

X Q. 336. Have you with you the book showing the policies of fire

insurance on property in this city you placed for the Philadelphia Fire Insurance Company?

A. I have looked for the book named at the request of counsel for complainants, and have searched diligently, but have not been able to find it.

X Q. 337. Who was the Washington agent of this co. in September, 1876?

(Objected to by Mr. Elliot.)

A. I was.

X Q. 338. Did you not place, for this company, a policy of insurance on the property described in these proceedings, being the premises 437 M street northwest?

(Objected to by Mr. Elliot.)

A. Yes.

X Q. 339. Please state when you placed that policy.

(Objected to by Mr. Elliot.)

A. I think it was a week or so after the loan was negotiated of September 27th, 1876.

443 X Q. 340. Are you positive about that?

(Objected to by Mr. Elliot.)

A. To the best of my recollection, I am.

X Q. 341. To whom was the loss, if any, on this policy of insurance payable?

(Objected to by Mr. Elliot.)

A. The loss, if any, was payable to Addie M. Sweet, direct, and to Robert K. Elliot and Charles T. Davis, trustees, as their interest might appear.

X Q. 342. What was the nature of the trust referred to in the policy in respect to the payment of the loss then held by you and Elliot, trustees?

(Objected to by Mr. Elliot.)

A. The intention was to secure the five thousand dollar loan made by Samuel T. Williams on the Sweet property in case of fire.

X Q. 343. Where was that policy of insurance prepared?

(Objected to by Mr. Elliot.)

A. It was prepared in my office.

X Q. 344. By whom?

A. My clerk.

X Q. 345. Under whose direction?

A. Under my direction.

(The last three questions objected to by Mr. Elliot.)

444 X Q. 346. Have you brought with you the telegram referred to at our last session, and which you were requested to produce?

A. I have not, but I have searched diligently for it; but a copy of the telegram can be obtained from the Western Union Telegraph Company, I think.

X Q. 347. Have you any data in your possession from which you can state when that telegram was received by you?

A. I have.

X Q. 348. State from that data when it was received.

A. I have a letter in relation to this telegram, dated Philadelphia, Sep-

tember 26th, from Colonel Audenried, in which he stated that he would telegraph me before 12 o'clock the next day if he would take the loan.

(Paper referred to filed herewith and marked Exhibit J. B. L., No. 6.)

X Q. 349. Anything else there?

A. Here is another letter, in which Mr. Audenried's brother stated that he was greatly disappointed because the loan was not secured for him.

(Paper referred to filed herewith & marked Exhibit J. B. L., No. 7.)

And here is another letter, in which he stated that he had no feeling upon the matter as I had offered to place his brother's money elsewhere.

(Paper referred to filed herewith & marked Exhibit J. B. L., No. 8.)

Counsel for complainants here closed the cross-examination.

445 Adjourned until Monday, May 27th, at one o'clock.

Met pursuant to agreement of counsel, Tuesday, May 28th, 1878, at o'clock p. m.

Present, J. S. Edwards, esq., Charles A. Elliot, esq., and W. Blair, of counsel, and Charles T. Davis, witness:

Continuation of examination Charles T. Davis:

(Counsel for defendants Davis requests the counsel for the complainants to propound the cross-interrogatories which the witness heretofore declined to answer.

Which counsel for the complainant' says he does not to do for the purpose of his cross-examination, having heretofore closed the cross-examination.)

Redirect examination by Mr. ELLIOT:

1. Q. Examine Exhibit J. B. L., No. 3, and state whether that note was in the same condition at the time of its delivery to the complainants as it is at present?

(Objected to by Mr. Edwards.)

A. No, sir; the words "Jackson, Brother & Co." were added
446 since; also the words "extended for six months from January 1st, 1876, Charles T. Davis;" also the words "credit my account, Charles T. Davis," and also the words "July, 1876."

2 Q. Was it otherwise in the same condition?

A. The words "Lot No. 49, in square 513," on the face of the note, that is, at the top, and the words "Cancelled, C. T. D.," were since added by me.

3 Q. You have been asked on cross-examination as to what conversation occurred between you and the defendant Stickney at the time of the execution of the deed of release, and that question you declined to answer. Please give your reasons therefor, and answer the question now.

A. I refused to answer the question, I believe, upon instruction of counsel; but before that I had answered the question in part, I think. Mr. Stickney called Mr. B. B. Snyder and asked his opinion about signing the release. Snyder stated it was best, always, to see the cancelled notes, but after that, Mr. Stickney, at my request, signed the release. I don't remember minutely all the conversation, but I have given all the facts that I can call to mind.

4 Q. You have been asked on cross-examination as to the truth of the facts set out in your answer, and as to the truth of the affidavit

447 annexed thereto; state whether or not, at the time that answer was prepared, and when it was sworn to by you, those facts, as you believed, were true.

A. They were; and I signed the answer and the jurat because I thought the facts were true, and I have since found that they were.

5 Q. You have been asked whether you paid interest to the complainants in the month of July, 1876, on the three notes then remaining unpaid, and in your answer you referred to a draft on the Southwark National Bank, of Philadelphia. Have you that draft with you? If so, please produce it.

A. Yes, sir. (Paper referred to here filed, and marked "Exhibit J. B. L., No. 9.)" I find by the draft that the interest was paid on the notes on July 15th, 1876, and not in the month of August, as I supposed.

6 Q. I believe you have testified that in September, 1876, you were a real-estate broker. State, if you please, how long you were engaged in the business as real-estate broker, or in negotiations of loans.

A. I commenced the business you speak of on my own account before I was twenty-one, and in this city from July, 1873, to the present time.

448 7. Q. Is the business of a negotiator of loans embraced in the terms of "real-estate broker?"

A. Not always.

8. Q. What is the business of a real-estate broker?

A. His business is to act as an agent between parties purchasing and selling real estate. That is his legitimate business. If a man adds to it the business of negotiating loans, he has two distinct occupations.

9. Q. Are you familiar with the customs and habits of negotiation of loans on real estate?

(Objected to by Mr. Edwards.)

A. I am. The bank of Riggs & Co. place a great many loans on real estate, but they are not real-estate agents.

10. Q. If A, desiring to borrow money upon real-estate security, should approach a broker for that purpose, and a loan should be the result, by whom are all the papers relating to the transaction usually prepared, if you know?

(Objected to by Mr. Edwards.)

A. If a person making the loan has the ability, and understands the business, he generally prepares the papers; if not, he employs a conveyancer or attorney.

11. Q. Is it the usual custom or habit of the broker to prepare these papers?

(Objected to by Mr. Edwards.)

449 A. It is.

12 Q. You have been asked as to the preparation of the deeds of trust of September, 1876, the deed of release from Stickney and yourself to Addie M. Sweet, and the recording of those papers; state, if you please, whether in the preparation of those papers and their record you did or did not follow the usual custom of brokers?

A. I did.

13 Q. If application be made to a broker for the negotiation of a loan what does he usually do as to procuring the funds?

(Objected to by Mr. Edwards.)

A. If he has acquaintances among moneyed men, he generally selects two or three and offers them the loan, one after the other, and the first one who is satisfied with the security generally takes it, and orders the agent to see that the papers are properly prepared, and have him to furnish a proper abstract of the title, see that the insurance is all right, the deeds properly recorded, and all his interest looked after.

14 Q. Did you, in procurement of the Williams loan, follow that usual custom?

A. I did.

15 Q. You have referred in your cross-examination to a certain
450 telegram of September from Col. J. T. Audenried, of Philadelphia, to you, which was received about five minutes after the negotiation of the Williams loan, as you stated, and touching this particular property; have you that telegram?

A. I have.

16 Q. Produce it, if you please.

A. I do.

(Telegram and letter of Sept. 27, 1876, filed in evidence, marked "Ex. J. B. L., No. 10 & 11.")

17 Q. Have you the bill book with you?

A. I have not.

18 Q. You were inquired of in cross-interrogatory No. 312, as to entries in this book of the notes of January 1st, 1875, that you received from Sweet; what is that entry?

A. It is as follows——

19 Q. Is there any lead pencil memorandum, under the head of remarks, opposite this entry?

A. There is, and it is in the following language——

20 Q. When was the lead pencil memorandum made?

A. It was made at the time of the delivery of the notes to Jackson, Brother & Co.

21 Q.

It is to make entries under the head of that column, entitled "remarks," as to what disposition may have been made of the notes, or anything pertaining to the notes, of which entries are made; such
451 entries are made pending the negotiations, that is, before final disposition of the notes, and after the title had passed fully to the notes I generally erased the memorandum. The memorandum was simply to keep the matter in mind.

22 Q. Do you know when you transferred to the complainant the policy of insurance, certificate of title, and deed of trust, securing the notes of Sweet, of January 1st, 1875?

A. The papers were not transferred until after all the notes mentioned, that is, the three notes of $1,833.33 each, and the note of twenty-five hundred dollars; what exact date I do not remember, but, I think, after Mr. Jackson had his suspicions aroused, as he has stated, that everything was not going all right, that he employed Mr. Morsell, and before employing him, he came to me and asked me to deliver to him the papers and memoranda of every kind relating to the notes held by him, which I did.

23 Q. Do you know when he employed Mr. Morsell, or about what time?

A. I do not, but think it was a couple of months before the institution of this suit, that is, in this case. Mr. Mórsell had been his attorney in bringing suit in regard to notes held by them and other matters against other parties for some time.

451½ 24. Q. You have spoken of having had in your possession a bond to indemnify Sweet against any disposition being made of the twenty-five hundred dollar note of January 1st, 1875, which, as you have stated, you held with this understanding: that it was not to be surrendered to Sweet until the title to some property on 8th street was made good to you. Was that title ever perfected?

(Objected to by Mr. Edwards.)

A. The title to that property was never perfected, to my knowledge.

25. Q. Before you made any use of that note did you or did you not notify Sweet that you intended to do it?

(Objected to by Mr. Edwards.)

A. I did, as I have already stated. I did not have the bond to secure Sweet against the disposition of the notes, but I kept a copy of it, part of which is in the handwriting of his clerk and part in his own.

26. Q. Was he in fear that you were about to dispose of this note of twenty-five hundred dollars in some way; and was no objection made by him thereto?

(Objected to by Mr. Edwards.)

A. I notified him at the time; but I first delivered it to Jackson, Brother & Co., and then I delivered it to Bigelow and Benjamin;

452 and then when I returned it to Jackson, Bro. & Co. he was notified by me, and he promised to perfect the title but never did it.

27. Q. You have stated that you delivered this note of twenty-five hundred dollars to Bigelow and Benjamin as collateral security; and if you have in your possession now anything touching it?

A. I have the note for which the twenty-five hundred dollar note of the Sweets mentioned was given as collateral, which I now produce.

(Which is offered in evidence, and marked Exhibit J. B. L., No. 11.)

28. Q. Did you deliver to Bigelow and Benjamin, with this note, any papers relating to the Sweet property?

(Objected to by Mr. Edwards.)

A. I think I did. Gen'l Benjamin was a very careful man, and would never take notes represented to be secured unless accompanied by abstract of title, deed of trust, policy of insurance, and all papers relating thereto.

29. Q. That original note was paid, was it not?

(Objected to by Mr. Edwards.)

A. The note was paid by my check, dated May 19th, 1875, on the Metropolis Savings Bank, which check is endorsed by Bigelow & Benjamin.

453 30. Q. After the negotiation of the Williams loan, as it has been termed, you stated that you put the money derived therefrom to your own credit with Riggs & Co. Why did you retain that money?

A. I retained it for many reasons; first, because I was the proper one to disburse it; secured, by consent of Jackson, Bro. & Co., and by consent of Sweet, and all parties—that is, Davis & Son and the others.

31. Q. You have stated that subsequent to your receiving that money you called upon the complainants, or had a conversation with Mr. Will-

iam B. Jackson. Please state why and when you called, and fully what transpired between you.

A. I called, as I have state', before the loan was consummated with Mr. Williams, and had a talk with Mr. Jackson, and he said that he did not wish to be bothered with the details, and left it all with me; and he stated as he had taken the notes from me he left me to attend to all the details. And when the deed of release from Stickney and myself was signed—my father signed it—and the day the negotiation was closed, I went down to see Mr. Jackson—I think it was on a Wednesday—and he was out of the city, and did not sign the release; so the next day—I think, Thurs-
454 day—I called upon him and offered to pay part of the two notes of $1,833.33 each held by them, and he said that as long as the interest had been paid he did not care to take the cash until the maturity of the notes; so the money stood to my credit. I made another tender of the money on the 3rd of November, 1876, but they did not accept it; he said that as long as they could get the money they did not want it; but he cautioned me to be very careful of the matters that they had taken from me, and not to jeopardize their interest in any way by any act of mine.

32. Q. Was defendant Sweet indebted to you in September, 1876; and, if so, what was the aggregate of the indebtedness?

A. He was indebted to me on unsecured paper and sundry loans, and on account of notes dated on the 4th of January, 1876, and payable monthly thereafter at a hundred dollars per month, and also on account of notes secured on lots numbered 78 and 79 in square numbered 193 which had been paid by me on the 23d day of January. The total amount of indebtedness at that time from Sweet to me and unsecured was about four thousand dollars. Jackson, Bro., & Co. held two notes drawn by E. J. Sweet for twenty-seven hundred dollars each secured on lots num-
455 bered 78 and 79 in square 193, which notes were on a second incumbrance and subsequent to the notes bearing date January 4th, 1875. I paid the first incumbrance and held them as against Sweet and let the Jackson Bro., & Co.'s notes come down as a first deed of trust.

33. Q. Do I understand you to say that it is the usual costom of a broker to whom application has been made for a loan upon real estate, to prepare or have prepared, all papers that may be necessary in order to complete the transaction; to see that such papers as should be recorded are recorded?

(Objected to by Mr. Edwards.)

A. That is the usual costom where the beneficiary has confidence in the agent.

(Counsel for defendants Davis requests the examiner to propound to the witness the questions heretofore asked and declined to be answered, which the examiner accordingly does.)

The witness answers, in reply to cross-interrogatory 16, as follows:

A. I own the southern 26 feet 10¼ inches of lot 11, in square 455, and the valuable property on 7th street opposite the Patent Office. I had money in government bonds—over ten thousand dollars; and in District securities to the extent of eight or nine thousand dollars, actual value.

456 To cross-interrogatory 20 he answers as follows:

A. I do not remember of any other real estate, but I had per-

sonal notes drawn by different parties, endorsed, and secured by deed of trust.

In answer to cross-interrogatory 25 he says, as follows:

A. The property was sold under a deed of trust, but the trust was not given by me; as I have stated I spent nearly eight thousand dollars on the property, and it was afterwards sold at public auction under the deed of trust for thirty thousand dollars, which was sufficient to pay the claim which was on it. I did not desire to carry the property as it had depreciated in value as other real estate had.

In answer to cross-interrogatory 153, he states that he had already answered that in his redirect examination.

In answer to cross-interrogatory 164 he says:

A. They were loans upon real estate.

In answer to cross-interrogatory 221 he says:

A. As I have said Sweet was indebted to me at the time and I was to take up the notes held by Jackson Bro., & Co.; I deducted the money I had paid on the first notes secured in the deed of trust—the deed of January 1st, 1875.

457 34. Q. You were called upon at several sessions to produce certain books as far as you could find them; did you make a diligent search for all books and memoranda of any kind, touching this case?

A. I did; and the books and papers were examined by the counsel for complainants—those that I produced.

35. Q. Did you have in your possession or under your control any books or memorandum touching this case that you have not produced?

A. I know of no book, paper, or memorandum touching this case that I have not produced that would throw any additional light upon it.

36. Q. Have you searched for the deed of release heretofore referred to; and, if so, with what success?

A. I have searched diligently, but have not found it.

Close of redirect examination.

Recross-examination by Mr. EDWARDS:

1. R. X Q. You have attempted to describe the condition of the note of January 1st, 1875, for $1,833.33, payable in one year after date, and marked J. B. L., No. 3. Please state whether in fact there was any writing or memorandum on the back of this note of any description whatever, at the
458 time you delivered it to the complainants, other than the endorsement "Augustus Davis?"

A. There was none.

2. R. X Q. Please tell me when you wrote, as you state, on the face of this note the words and figures, to wit, "Lot 49, in square 513"?

A. The words referred to were not written on the face of the note by me until some time after I had paid the note.

3. R. X Q. When did you write on the face of this note the words "Canceled—C. T. D."?

A. I wrote the words referred to on the 28th or 29th of September, 1876, after I received the check of Samuel T. Williams.

5. R. X Q. You have stated that some time before the institution of this suit that William B. Jackson called upon you for all papers in relation to

notes that he held. Please state what papers you then delivered to him, particularly and accurately.

(Objected to by Mr. Elliot.)

A. I cannot remember particularly and accurately just what papers were delivered to him, as I named the papers that he wanted to my clerk and he hunted them up and I think gave them to Mr. Jackson when he came in.

5. R. X Q. Did you hand Jackson any paper in fact on this occasion?

459 (Objected to by Mr. Elliot.)

A. I did hand him papers and left some of them on my desk for him, but just what they were, as I have stated, I do not remember.

6. R. X Q. You have stated on cross-examination that you had testified that you called upon the complainants, or William B. Jackson, before the negotiation of the Williams loan. Did you in fact so testify in this case?

A. That is the best of my remembrance.

7. R. X Q. Tell me when you called on this firm prior to the negotiation of the Williams loan, in relation to the Sweet notes, then held by them?

A. I think it was a week or so before the loan was finally consum'ated, in September, 1876.

8. R. X Q. Please state with whom you had this interview, who was present, and what was said, fully and particularly.

(Objected to by Mr. Elliot.)

A. I had the interview with Mr. William B. Jackson. I never transacted business with any other member of the firm, except with Mr. Seufferle at one time when Mr. Jackson was sick and not able to attend to business; Mr. Jackson was there alone, as he usually is, in the back office; and the substance of the interview I have already stated. I cannot state the particulars; I remember he cautioned me to be very careful
460 about the securities held by them as he depended upon me to guard their interests faithfully in all matter that they had taken from me.

9. R. X Q. Did you in fact ever inform the complainants, or either of them, of the negotiation of this Williams loan prior to the time Mr. Williams handed you his five thousand dollar check?

A. I did; I informed Mr. William B. Jackson that I was going to make a change in the Sweet notes at the time before stated.

10. R. X Q. Did you call upon them or speak to them in this respect on any other occasion?

(Objected to by Mr. Elliot.)

A. I do not remember just when, but I think I did speak to Mr. William B. Jackson on the street once or twice.

11. R. X Q. Where was it and when was it?

(Objected to by Mr. Elliot.)

A. It was on Seventh street opposite the Bank of the Republic. I do not remember it was prior or subsequently to the time already stated or not.

12. R. X Q. Did Mr. Jackson at the interview that you speak of that took place at his office, say anything to you other than what you have testified to?

(Objected to by Mr. Elliot.)

A. He said other things on other matters and subjects.

13. R. X Q. In relation to this suit?

A. He said other things, but I do not remember just what.

Adjourned until Saturday June 1st, at ten (10) o'clock.

461 JUNE 8TH, 1878.

Met pursuant to adjournment, at 1.30 p. m.

Present, Mr. James S. Edwards for complainant, and Mr. C. A. Elliot, for defendant Charles T. Davis.

Continuation of cross-examination of Charles T. Davis by Mr. JAMES S. EDWARDS:

Q. Did the 7th st. property you speak of bring more at the sale under the deed of trust than sufficient to pay the incumbrance thereon, and which incumbrance existed at the time it was conveyed to you by your father as you have stated.

(Objected to by Mr. C. A. Elliot.)

A. I think not; it brought sufficient to pay the debt upon it, and the expense of sale and taxes, which is all that I cared for. The property had depreciated, as I have before stated.

Q. Did you know, when you was first called as a witness and began your deposition in this case what you have stated on pages 134 & 135 at the last session?

A. I do not remember particularly the time when I knew it, the facts have always been in my remembrance and were as I stated on said mentioned pages.

Q. Did you know all thus stated by you on these two pages when you signed and swore to your answer in this case?

(Objected to by Mr. C. A. Elliot.)

462 A. I told my counsel, at the time of preparing the answer, of the facts, I think.

Q. Are you positive of this.

A. I think I am.

Q. Do you recollect on or about the 1st of December last of executing a deed of trust to George W. Phillips and Charles T. Glover to secure a certain note made by you for the sum of $12,000, dated December 1st, 1877, to the order of Augustus Davis, payable in 30 days after date, with interest at 8 per cent. per annum, payable at the Bank of Washington, by which deed of trust you conveyed certain property in this city therein particularly mentioned, as well all your interest in all other property in the District of Columbia?

(Objected to by Mr. C. A. Elliot.)

A. The de'd of trust and note mentioned were prepared by Mr. Edwards, counsel for complainant, and handed to me to be executed and delivered to him for the benefit of the firm of Jackson, Bro. & Co., and after said papers were handed to me and submitted to my counsel he said and advised me not to deliver them to Mr. Edwards for the purpose that he had asked me.

Q. Who was this counsel?

(Objected to by Mr. C. A. Elliot.)

A. Mr. R. K. Elliot.

463 Q. What became of that deed of trust and $12,000?

(Objected to by Mr. C. A. Elliot.)

A. I passed it to a party to whom I was indebted as collateral security for the existing indebtedness.

Q. Was the deed of trust recorded; and if so, who took it to the recorder's office?

(Objected to by Mr. C. A. Elliot.)

A. The deed of trust was recorded, but I did not take it to the recorder's office. I delivered it to the party who took the note, and he had the *the* trust recorded.

Q. Was not that deed of trust and note prepared at your suggestion for the purpose of additional security to Jackson, Bro. & Co. for the obligations they held which they had received from you, and through which there was a probability of their suffering through your transactions.

(Objected to by Mr. C. A. Elliot.)

A. It was not. The deed of trust and note were prepared because counsel for complainants had entered suit at law against me for some of the notes upon which I was endorser, and threatened suit upon the others. I told them that I did not wish to go to the expense of litigation on said obligations, and as most of my property was incumbered they could only reach it
464 through a bill in equity—that is, a creditor's bill after judgment, and that if said suits were dismissed I would put them in the same position that they would be in case the creditor's bill were filed on judgments by giving a deed of trust upon equity of redemption which I had in the property, which at that time was valuable and sufficient to pay my existing indebtedness; but as counsel for complainant desired to hold a deed of trust and note simply as collateral security, no arrangement could be made. I refused to treat with them any further on the subject. I desire to correct what I have stated in regard to suit at law by saying suit had been entered. I do not remember whether the suit was at law or in equity.

Q. Did you not, when you called for the purpose of having this deed and note drawn, state to me that you felt sorry for the condition of affairs; that you desired to take the whole responsibility on your shoulders; that you alone was to blame for the then existing state of affairs and the position that Jacksons were placed in; that you expected to have met, or that these notes would have been paid when they were due, but owing to financial embarrassments, and being pressed by your creditors, you found yourself unable to take care of them, or words to that effect.

465 (Objected to by Mr. C. A. Elliot.)

A. I did not make exactly such a statement as the counsel for the complainant has strung out in this respect; but I did say that I was sorry that the firm of Jackson, Brother & Co. or their interests should have been in any ways jeopardized through me or the parties from whom they bought the paper from me, or discounted paper through me, and that the drawers of the notes were utterly worthless, nothing could be made out of them, and that I desired to take the burden upon my shoulders and act honorably and squarely, and for the purpose of securing them I mentioned the deed of trust and note for $12,000 above named, and also offered other notes secured by first mortgage upon real estate which, if all of said notes had been taken, would have been more than amply sufficient to pay all the claims whatsoever that they held against me or my father on account of my transaction and business with them.

Q. Please state how the aggregate sum of $12,000 mentioned in the deed of trust referred to, and which was intended as additional security to the complainant was made up or calculated.

466 A. I have not said that this note was intended as additional security, but it was to have been taken by them as absolute settlement.

Q. Was it not then and there stated to you emphatically and directly by me, to whom Mr. William B. Jackson had left the matter, that that note and deed of trust would be executed and accepted upon the condition only as additional security, and with the explicit understanding that this suit which was then pending would not in any manner be stopped, and should anything be realized from the proceeds of any sales made under that deed of trust to secure the sum of $12,000 before this suit be determined, it should be credited upon the notes they held?

(Objected to by Mr. C. A. Elliot.)

A. You did make such a statement after the trust was prepared, but not before, and that was the reason why, after advice from counsel, I refused to deliver all these papers, notes, and security in shape of additional security to Jackson, Bro. & Co., and still have the suit at law or equity prosecuted against all parties who have been drawn into this litigation. I have done all that any man could do. I was willing to surrender

467 my own property at that time that I had, and all that I had in my possession in this city.

Cross-examination closed.

By Mr. C. A. Elliott:

Q. You have stated in your answer to the cross-interrogatory 9, page 142, substantially, that prior to the time Mr. Williams handed you his $5,000 check, you had informed Mr. William B. Jackson that you were going to make a change in the said notes? State when that was, and what, if anything, Mr. Jackson said.

(Objected to by Mr. Edwards, because on cross-examination counsel exhausted the witness as to these very facts.)

A. I have tried to state fully in my cross-examination the answer to this interrogatory, and all that I can say further is that Mr. Jackson made no objection. He simply cautioned me to be careful in dealing with Sweet, as he was notoriously slippery, and he did not wish to deal with him only through me, as he looked to me for the payment of the papers he had taken, and cautioned me to be careful. I think he stated also that he was somewhat prejudiced against Sweet on account of his transaction

468 with the firm of Hall & Hume, of which firm his (Jackson's) sister was a member, or had been a member.

Q. You have been questioned as to whether you possessed knowledge of certain facts testified by you at the time you were first sworn as a witness. Do you recollect these facts which you have testified to on account of their occurrence at the date you have mentioned?

A. I do not think I quite understand the question.

Q. Has any fact that you have testified to in this case been manufactured since you were sworn here as a witness, or is not your testimony exactly your present recollection of the occurrence from January, 1875, to the present date in regard to this transaction?

(Objected to by Mr. Edwards.)

A. I have manufactured no facts and have tried to be very explicit in all my testimony, as this large mass which my deposition makes ought to be sufficient evidence. I have given all the facts and the truth as I now remember it.

Q. State under what circumstances your answer filed in this case was prepared?

(Objected to by Mr. Edwards.)

A. It was prepared by my counsel after statements of facts furnished to him by me.

469 Q. Was the answer in this case the only one prepared at that time for you?

(Objected to by Mr. Edwards.)

A. My counsel prepared several answers for me in this and other cases.

Q. Well, specify the time.

A. I know we were very much hurried to get them in.

Q. Have you had no experience as a dealer in commercial paper?

A. I have had large experience in handling commercial paper.

Q. The Sweet notes held by the complainants have printed at the end, "Secured by deed of trust. A. Davis & Son, real estate agents." State whether or not notes of hand are written and circulated on printed forms of this character.

A. That is a common form of note among real estate brokers in buying commercial papers. I have handled more than five hundred of such notes; that is, upon forms bearing printing on either end, secured by deed of trust, which notes were simply notes of hand and unsecured. I have never depended on a person's word or upon the printing on the face of the note to see if it was secured. I generally had the title examined and made inquiries to satisfy myself.

470 Examination of Charles T. Davis is here closed.

IRWIN B. LINTON,
Examiner.

Subscribed and sworn to before me this day of , A. D. 1878.

Examiner in Chancery.

The above deposition of Charles T. Davis having been accessible for the said Davis to sign, and he having failed to sign the same, upon request of the counsel for said Davis, the same is signed this 26th day of September by the examiner, for said Davis.

IRWIN B. LINTON,
Examiner.

471 JUNE 28, 1878.

Met pursuant to agreement.

Present, Mr. Jas. S. Edwards, for complainants, Jackson Bro. & Co., and Mr. Chas. A. Elliot, for defendants Davis.

Mr. C. T. DAVIS, witness on behalf of defendant, recalled by Mr. ELLIOT:

Q. Did you or not have any conversations or conversations with the de-

fendant Edwin J. Sweet before the execution of the deed of release of September, 1876, from you and William Stickney to Addie M. Sweet, touching the notes held by the complainants? If so, state what it was.

(Objected to by Mr. Edwards.)

A. Just before the release was executed Edwin J. Sweet told me that he was not able to pay the notes in full, held by Jackson, Bro. & Co., but that he wished to keep his credit good with them, and said that he could raise money temporarily on some building association stock, John W. Starr, and raise money on endorsed notes from Henry Strasburger; that he would use the money in paying *this money in paytng* the notes to Jackson Bro. & Co. temporarily, and that we could have the final settlement after the notes were taken up by him. I saw him again just after
472 Mr. Williams handed me the check, and he said that he had not concluded his arrangements; and then he afterwards told me that he could not do it. I then went to *went to* see Mr. Jackson, and he was out of the city. He had gone to his farm in Maryland, I think. I then, after he, Mr. Wm. B. Jackson, came back the next day, made him a tender of the second notes and money, as I have before stated.

Q. How long prior to the execution of the release did you have the conversation with Sweet?

A. I think it was just before, or about the same day the release was executed.

Q. What, if any, other conversation prior to the release, as to having paid, or made arrangements as to the payment or settlement of the notes held by the complainants.

(Objected to.)

A. I think I have answered that question fully. He said he would take up the notes by money derived from Starr and Strasburger; but afterwards he failed to make the arrangements, and so informed me, after I had received the check from Williams, as I have stated.

Examination of Mr. C. T. Davis is here closed,

IRWIN B. LINTON,
Examiner.

473 Subscribed & sworn to before me this day of , 1878.

The above deposition of Charles T. Davis having been accessible for him, the said Davis, to sign, and he having failed to sign the same, upon request of counsel for said Davis, the same is, this 26th day of September, 1878, signed by the examiner for said Davis.

IRWIN B. LINTON,
Examiner in Chancery.

474 RAWLEIGH W. DOWNMAN, witness on behalf of the defendant, being duly sworn and examined, testifies as follows:

Direct examination by Mr. ELLIOT:

1. Q. State where you reside, and what is your occupation?
A. I reside in Georgetown, and am in the real estate business.
2. Q. How long have you been in that business?
A. Since 1865.
3. Q. Are negotiations of loans upon real estate a part of your business?

A. Yes, sir.

4. Q. Are you familiar with the custom of brokers in respect of the negotiations of loans?

A. Yes, sir; I have done a great deal of it myself.

5. Q. By whom are the papers that may be necessary prepared?

A. Well, I don't know that there is any positive custom about that. They are very frequently prepared by brokers themselves; they sometime' come to us already prepared by an attorney. If the person who is negotiating the loan—the lender, I mean—desires it, his attorney always prepares the papers. Sometimes the person borrowing the money wishes his attorney to prepare them; but if it is not required by either
475 parties, the papers are generally prepared in the broker's office. We have all necessary forms for that purpose.

6. Q. By whom then are the deeds recorded?

WITNESS. In the matter of loans?

COUNSEL. Yes, sir.

A. It is the business of the broker to do that, unless the attorney is especially requested to do it.

7. Q. By whom are the policies of insurance, in case there should be policies of insurances obtained?

A. Well, it is the business of the brokers to do that, to see that they are properly made out, and so on.

8. Q. To whom usually are the proceeds of the loan paid?

A. Generally, the money is paid into the hands of the broker.

9. Q. Then, if a broker were negotiating for a *a* loan upon certain real estate, and should obtain money from B, and the property upon which the the loan was to be secured, was encumbered by a deed of trust, it would be the custom of the broker, or it would not be unusual for the broker to prepare a deed of release of the first trust, the deed of trust securing the lender, obtain the policy of insurance, and have the release and deed of trust recorded?

476 A. No, sir; it would not be unusual; I suppose in the majority of the cases it would be done that way.

10. Q. Do brokers sometime' combine the business of an insurance agent, with their ?

A. Very frequently.

11. Q. And is it usual for them to insure the property in the company which they represent?

A. Yes, sir; for instance, I represent a fire insurance company, and whenever I can control it, I put the insurance in that company.

Cross-examination by Mr. JAS. S. EDWARDS:

13. X Q. Please state what are the ordinary duties of a broker engaged in the negotiation of loans on real estate, in representing the interest of the party loaning the money?

A. I consider it the duty of the real-estate broker to look closely to the interest of the person loaning money, all the time. Say A should apply to a broker for a loan, the broker then comes to B, who has money to lend, he requires A to employ an attorney to furnish an abstract of title, which is furnished. It is the duty of the broker if any incumbrance as mortgages and unpaid taxes, to see that are all paid up before
477 any money is paid over to A; after that is done, he pays up all

the balance of the money to A. In the majority of the cases the lender pays the money in the hands of the broker; it is necessary to do that sometimes; the lender sometimes gives a check to the order of the borrower, and then you have to get the indorsement and have to run around town after the parties.

By Mr. CHAS. ELLIOT:

14. Q. Is it unusual for the proker to procure an abstract of title from an attorney, if a lender requests an abstract of title from such attorney?

A. It is the priviledge of the lender to select his attorney, but if he does not select his attorney, the broker usually does; for instance, if I am lending money for a gentleman, I also recommend a lawyer to him, and if he is indif'erent about it, I select an attorney for him.

15. Q. If the lender of money should state to the broker that he desired an abstract of title made by an attorney designated, would it be unusual for the broker to procure the abstract or certificate of title, pay for such abstract and deduct the money from the proceeds of the loan.

478 A. That would be customary; the attorneys generally make a letter memorandum, "fee, so much"—whatever the fee might be, and it is the duty of the broker to reaserve that much money for him.

R. W. DOWNMAN.

Subscribed and sworn to before me this 28th day of June, 1878.

IRWIN B. LINTON,
Examiner in Chancery.

479 Mr. JOSEPH T. CALDWELL, a witness of lawful age, being duly sworn and examined, deposes and says as follows:

Direct examination by Mr. CHAS. A. ELLIOT:

My name is Joseph T. Caldwell; I reside in the city of Washington; and am connected with the house of B. H. Warner, real-estate broker; I have been connected with this house about five years.

16. Q. Is the negotiation of loans or real estate part of your business?

A. It is.

17. Q. Are you familiar with the custom of brokers in this city with respect to the negotiations of loans?

A. I am, sir.

18. Q. In the negotiations of loans upon real estate, where it becomes necessary to release the property from the operation of a prior deed of trust and to give another deed of trust to secure the party loaning the money, by whom are the papers, the release, and the deed of trust prepared, and who sees to their record?

A. The papers are prepared by the broker, with but few exceptions, and are taken to the record office by the broker or his agent.

19. Q. It is usual to obtain the policy of insurance upon the property on which the loan is secured, is it not?

480 A. Yes, sir.

20. Q. By whom is such policy usually obtained?

A. Well, by both; sometimes the owner of the property and sometimes by the broker.

21. Q. Do brokers sometime', in connection with their own business act as the agent of insurance companies?

A. Well, that I cannot answer; not being familiar with it.

22. Q. It would not be an unusual thing for a broker to obtain a policy of insurance upon the property?

A. Not at all.

23. Q. What is the custom as to furnishing an abstract of title to the property?

A. The custom is, that the broker selects an attorney to examine the title.

24. Q. In case the lender of the money should designate an attorney, would it be usual for the broker to obtain an abstract of title from such an attorney, & pay for it?

A. It is the custom of the broker, acting as the agent for the lender of the money in that respect to employ an attorney.

25. Q. To whom usually are the proceeds of the loan turned over?

A. To the borrower.

481 26. Q. Does not the lender sometimes pay the money by check or otherwise, to the broker?

A. As a general case they do to our concern. It is usual for us to receive the money from the lender to be paid to the borrower.

27. Q. You have no interest in this case, have you?

A. No, sir; I have none.

28. Q. Suppose A desires to negotiate a loan upon his property, should approach a broker, and that broker should obtain the money from B, and B should designate an attorney whose abstract of title he desired, would it be unusual for the broker to obtain such abstract?

A. Not at all.

Cross-examination by Mr. EDWARDS:

X 29. Q. In negotiating a loan for a customer of yours who is placing money on real estate through you, do you not represent the lender of the money?

A. We act in a dual capacity as agent for the lender as well as for the borrower.

X 30. Q. What are your duties, or what do you generally do or see to in relation to taking care of the interests of the lender, especially where there are other deeds of trusts, mortgages, or taxes on the property, of which you have notice by the abstract or otherwise?

A. We first examine the property, see if the security is ample,

482 we have the title examined, draw up the papers in connection with the loan, receive the money from the lender, pay all the taxes and all incumbrances on the property, and turn over the remainder to the borrower.

J. T. CALDWELL.

Subscribed and sworn to before me this 28th day of June, 1878.

IRWIN B. LINTON,
Examiner in Chancery.

483 CHARLES W. BLAZEY, being duly sworn and examined, testifies as follows:

Direct examination by Mr. ELLIOT:

My name is Charles W. Blazey. I reside in the city of Washington, District of Columbia. I am at present employed in the Bank of Washington as collection clerk, and was so employed in December, 1874.

31. Q. Please examine Exhibit J. N. O., number 9½, filed April 4th, 1878, and please state whether that note was ever in the Bank of Washington for collection; if so, by whom and where placed there, and whether or not paid at maturity.

(Objected to by Mr. Edwards as immaterial.)

A. That note was deposited in the Bank of Washington for collection the 28th of January, 1875. I cannot say whether it was deposited by a clerk of Jackson, Bro. & Co. or by a member of the firm, but it was deposited on their account. It was withdrawn on the 18th day of February, 1875.

32. Q. By whom was it withdrawn?

A. By the person properly authorized to receive it.

CHAS. W. BLAZEY.

Subscribed and sworn to before me this 28th day of June, 1878.

484 Mr. OTIS BIGELOW, a witness of lawful age, being sworn and examined, testifies as follows:

My name is Otis Bigelow. I reside in the county of Washington. I am surviving partner of Bigelow & Benjamin, bankers.

33. Q. Are you acquainted with the defendant Chas. T. Davis?

A. I am, sir.

34. Q. State, if you please, if some time in the month of May, 1875, Mr. Davis had any transactions with your firm of Bigelow & Benjamin.

(Objected to by Mr. Edwards.)

A. He did have.

35. Q. State the nature of the transaction.

A. On the 15th day of May, 1875, the firm of Bigelow & Benjamin renewed or extended a note that fell due on that day of twenty-five hundred dollars ($2,500), the number of the note being on this register (refers to book) 1672.

36. Q. Was not that note secured; and if so, by whom?

A. It was secured by collateral.

37. Q. At the time, then, you received as part collateral security a note of twenty-five hundred dollars, secured by deed of trust, dated January 1st, 1875, and payable three years after date to the order of Augustus Davis, secured by deed of trust on sublot 49, square 513; were
485 any other papers relating to that note passed to your firm?

A. We must have had evidence that the collateral note was good; I cannot say that we kept the papers; I think we did.

38. Q. What evidence must you have had?

A. The deed of trust and abstract of title securing the collateral note.

Cross-examined by Mr. EDWARDS:

X 39. Q. Can you testify from any personal recollection that you in

fact, three years ago, received any other papers with that collateral note; if so, please describe them accurately and fully?

A. If my answer is confined to yes or no, I should have to answer no.

X 40. Q. Have you any book, memorandum, or entry from which you can state that you did in fact receive with this collateral note a deed of trust, abstract of title, or any other paper whatever tertaining to it?

A. The entry must appear on the stock notes. We have no other entry for such kind of stock, or such kind of collateral rather——

X 41. Q. No, I understand that whatever papers you receive
486 relating to the collateral note is endorsed upon, or appears on the stock note, and that you have no other memorandum.

A. Only the collateral note; it would be included in the stock note; if there would be any other paper they would not be included in the stock-note, but would appear in a separate bundle or envelope.

X 42. Q. Have you any memorandum from which you can state that you in fact placed any other papers in an envelope or package other than the collateral stock note?

A. I have not, that I am aware of.

X 43. Q. Is there anything in fact within your reach that refreshes your memory, or have you in fact any present recollection that at the time you took the stock and collateral note you did receive any other paper?

A. I can only say that the transaction of having a note on that property is familiar to my recollection, and of making some inquiries in regard to that property on M street.

Question repeated.

A. I have, so far as this particular transaction gives no recollec-
487 tion about whatever, except what I see on the book.

X 44. Q. Is there anything on the books that shows that you in fact received any other papers than the stock note and collaterals?

A. No, sir; the books do not show even what the collaterals were.

Redirect by Mr. ELLIOT:

45. Q. If the stock note stated upon its face that the collateral note was secured by deed of trust, what would your firm have required?

(Objected to for reason too plain in question.)

A. We would have required full evidence accompanying the same note, that it was what it purported to be, a deed-of-trust note.

46. Q. What evidence?

(Objected to by Mr. Edwards.)

A. An abstract of title, deed of trust, or the clerk's receipt for the same for the amount so charged in preparation, and the value of the property, also an insurance policy.

47. Q. In this transaction you have no memorandum or anything that would lead you to believe that that custom or rule was deviated from it?

488, 489 (Objected to by Mr. Edwards.)

A. I had no such memorandum.

48. Q. Was the stock note paid?

A. It was.

By Mr. EDWARDS:

X 49. Q. Will you swear that in this particular case, in the face of what

you have just testified to, that you did require or did in fact receive a deed of trust, abstract of title, and policy of insurance when the stock note was handed to you?

A. If the statement made by counsel that the collateral note was a deed-of-trust note, then I say, yes.

Question repeated.

A. I do not remember anything about it.

OTIS BIGELOW.

Subscribed and sworn to before me this 28th day of June, 1878.

IRWIN B. LINTON,
Examiner in Chancery.

Testimony for defendants Davis is here closed.

490 *Exhibits to Def'ts Davis' Testimony.*

EXHIBIT J. B. L., No. 1.—*Filed May 3rd, '78.*

Policy of Insurance, Franklin Insurance Company, of Washington City.

No. 6867—inscribed to Aug. & C. T. Davis for $3,000. Premium $21.00. Dated Oct. 19, 1874, and expires Oct. 19, 1875.

491 EXHIBIT J. B. L., No. 2.—*Filed May 13th*, 1878.

$5,000.] WASHINGTON, D. C., *September 27th*, 1876.

Four years after date I promise to pay to the order of Samuel T. Williams five thousand dollars, value received, with interest at 9 per cent. per annum until paid, payable semi-annually. Payable at the German American Savings Bank, No. , due .

(Erased:) [ADDIE M. SWEET.]

(On margin:) A. Davis & Son. Secured by deed of trust on lot 49, sq. 513.

(Across the face:) Cancelled by sale of property.

[Endorsement.]

(Erased:) [SAM'L T. WILLIAMS.]

492 EXHIBIT J. B. L., No. 3.—*Filed May 13th, '78.*

$1,833.33.] WASHINGTON, D. C., *January 1st*, 1875.

One year after date we promise to pay to the order of Augustus Davis the sum of one thousand eight hundred and thirty-three $\frac{33}{100}$ dollars, value received, with interest at 8 per cent. per annum until paid.

Payable semi-annually.

Due .

(Erased:) { ADDIE M. SWEET. / EDWIN J. SWEET. }

(On margin:) Secured by deed of trust. A. Davis & Son, real estate agents. Lot 49, in sq. 513.

(Across the face:) Cancelled. C. T. D.

[Endorsed.]

(Erased:) AUGUSTUS DAVIS.

JACKSON, BROS. & CO.

Extended for six months from January 1st, 1876.

CHARLES T. DAVIS.

Credit my account.

CHARLES T. DAVIS.

Credit endorsed;

1875. By cash for int., July 3, to July 1, 1875, 7333.

1876. By cash for int., Jan. 4, to July 4th, 1876, 7455.

493 EXHIBIT J. B. L., No. 4.—*Filed May 13th*, 1878.

Date.	No.	Drawer.	In favor of—	On what or whose account.	Time.	When received.
1876.						1876.
Sept. 27	1319	Addie M. Sweet..	Sam'l T. Williams.	Loan on lot 49, sq. 513	4 y'rs	Sept. 27
27	1319	" " "	Augustus Davis..	" " " " " "	6 mo's	27
27	1319	" " "	" "	" " " " " "	12 "	27
27	1319½	" " "	" "	" " " " " "	18 "	27
27	1319	" " "	" "	" " " " " "	24 "	27
27	1319	" " "	" "	" " " " " "	30 "	27
27	1319	" " "	" "	" " " " " "	36 "	27

Jan. 1.	Feb. 2.	Mar. 3.	Apr. 4.	May 5.	June 6.	July 7.	Aug. 8.	Sept. 9.	Oct. 10.	Nov. 11.	Dec. 12.	Amount. Dollars.	Amount. Cents.	Rate of interest.	Remarks.
								1880.							
....	....	1877.	....	.....	....	....	....	27-30	....	....	....	5,000	.....	9%	S. A.
....	....	27-30	....	.....	....	....	....	1877.	....	....	....	530	26	8%	
....	....	1878.	....	.....	....	....	....	27-30	....	....	....	530	26	8%	
....	....	27-30	....	.....	....	....	....	1878.	....	....	....	530	26	8%	
....	....	1879.	....	.....	....	....	....	27-30	....	....	....	530	26	8%	
....	....	27-30	....	.....	....	....	....	1879.	....	....	....	530	26	8%	
....	....	.....	....	1877	....	....	....	27-30	....	....	....	530	26	8%	

494 EXHIBIT J. B. L., No. 5.—*Filed May 13th*, 1878.

Memorandum of sale made on the 17th day of July, 1877, by Charles T. Davis & Robert K. Elliot, trustees, under and by virtue of a deed of trust from Addie M. Sweet and Edwin J. Sweet, her husband, dated Sept. 27th, 1876, and recorded among the land records for the District of Columbia.

July 17, 1877, lot 49, of Aug. Davis, subdivision of original lot 8, in square 513, sold to Eli S. Blackwood for $6,325.

EXPENSES OF SALE.

Advertising	$66 51	
Auctioneer's charges	98 16	
Trustee's commission, 5 %	316 25	
Taxes for the year ending June 30, '76, paid by C. T. Davis Oct. 3, 1876	114 60	
Taxes for the year ending June 30, '77	110 89	
Insurance on dwelling # 437 M st	35	
Interest on taxes and insurance from October 3, 1876	12 50	
Int. on note secured by above trust from Sept. 27, 1876, to July 17, 1877, @ 9 %, $362.50, less $25 p'd by E. J. S.	337 50	
Am't of note secured by above trust, to order of Samuel T. Williams	5,000	
Am't over and above expenses and indebtedness due to the holder of the second deed of trust note on above property	233 59	
	$6,325	$6,325

495 CASH STATEMENT.

By am't of cash p'd by purchaser		$1,325
To am't of expenses for advertising, auctioneer's and trustees' commissions, taxes, int., &c.	$1,091 41	
Am't due holder of the second deed of trust note on above property	233 59	
	$1,325	$1,325

NOTE STATEMENT.

By am't of sale		$6,325
To am't paid in cash	$1,325	
" note payable to the order of C. T. Davis & R. K. Elliot, trustees, @ 4 yrs., from July 17, 1877, @ 9 % S. A	5,000	
	$6,325	$6,325

496 EXHIBIT J. B. L., No. 6.—*Filed May 28th, '78.*

PHILAD'A, *Sept. 26th.*

Mr. DAVIS, *Wash'n, D. C.:*

SIR: I will telegraph you, before 12 m. to-morrow, if I will take the loan. Would do so now but have not had an opportunity to look up the property, as I have just had your telegram (7 p. m.). I was at the exhibition. If you had said street and number, I would have known better than number of lot.

Very truly, y'rs,

JOS. C. ANDENRIED,
U. S. Army.

497 EXHIBIT J. B. L., No. 7.—*Filed May* 28, '78.

PHILAD'A, *Sept. 29th*, 1876.

Mr. C. T. DAVIS, *7th st., Washington, D. C.:*

DEAR SIR: Yours of 27th inst. is at hand, and I think you have by your great haste given me considerable trouble in the matter of the Sweet loan. My brother has parted with his securities, and his money now lies idle in my bank. I am not able to see him about the new loans as he may be absent from the city. He certainly telegraphed you before 12 o'clock on the day named.

I shall be detained here as witness in a suit between one of our big R. R. Cos. & the city of Philad'a, and cannot tell when I will be able to leave for Washington.

Yours, truly,

J. T. AUDENRIED.

498 EXHIBIT J. B. L., No. 8.—*Filed May* 28, '78.

313 WALNUT ST., PHILAD'A, *Oct. 2d*, 1876.

(Written between date and address across the face:) Mr. Ashford has full instructions as to what action is required in the matter of the L st. operations.

Mr. C. T. DAVIS, *7th st., Washington, D. C.:*

DEAR SIR: Your favors of 29th & 30th ult. were duly rec'd; would have answered earlier but for my absence from the city. My brother not accept either of loans for $2,000 or 2,500, & I should have so informed you.

In regard the proposition you made concerning a contemplated trade of the L st. houses in which you would be able to reduce your indebtedness to me, I think I would rather not change positions for the present.

You are very kind in offering to substitute a loan on one of your 14th st. houses for five thousand doll's in place of the Sweet loan. It was not necessary for you to do this, as there is no feeling whatever remaining with my brother or I concerning the little disappointment of several days ago. As soon I see my brother will tell him of your offer, but do not wait for him if you do not hear by this mail.

As soon as you are able to comply with our agreement, which is now with Mr. Ashford, you will please telegraph me and I will visit Washington, and we will have a full and complete settlement of the L st. operation.

Yours, truly,

J. T. AUDENRIED.

499 EXHIBIT J. B. L., No 9.—*Filed May* 28, '78.

$748.66.] WASHINGTON, D. C., *July 15th*, 1876.

At sight, pay to the order of Jackson, Bro. & Co. seven hundred and forty-eight $\frac{66}{100}$ dollars, value received, and charge the same to the account of—

CHARLES T. DAVIS.

To SOUTHWALK NATIONAL BANK,
Philadelphia, Pa.

(Endorsed:) JACKSON, BRO. & CO.

Pay P. Lamb, esq., cashier, or order for collection.

C. A. JAMES, *Cashier.*

500 EXHIBIT J. B. L., No. 10.—*Filed May* 28, '78.

WESTERN UNION TELEGRAPH COMPANY.

Dated Phila., Sept. 27, 1876.
Received at Post Office Dep't, Wash'n, D. C.

To CHAS T. DAVIS, 615 7 *st*,
Have instructed Ashford by letter.

J. T. AUDENRIED.

501 EXHIBIT J. B. L., No. 11.—*Filed May* 28, '78.

WASHINGTON, D. C., *April 12th*, 1875.

Thirty days after date I promise to pay to Bigelow & Benjamin, or order, twenty-five hundred dollars, without defalcation, for value received, without interest.

I have deposited with them as collateral security the following trust notes, viz: One drawn by Edwin J. Sweet et al., at three years from January 1st, 1875, payable to the order Augustus Davis, with int. @ 8 %, for $2,500; one Henry Claton, at 30 months from Dec. 1st, 1874, to the order of Samuel Beall, for 158.35, int. 10 %, and hereby authorize the legal holder thereof to sell the same, or any part thereof without notice, at public or private sale of this promise.

CHA (Torn out) DAVIS,
615 *7th St.*

(Endorsed:) Paid May 19th, 1875. By check on the Metropolis Savings Bank, $2,466.50. C. T. D.

Extended to June, 14 '75. Interest paid.

(Stamped on face:) A. Davis & Sons, May 19, 1875, Washington, D. C.

502 EXHIBIT J. B. L., No. 12.—*Filed June 8th*, '78.

313 WALNUT ST., PHILA'D'A, *Sep. 27th*, 1876.

Mr. C. T. DAVIS, *7th st., Washington, D. C.:*

DEAR SIR: My brother, Col. Joseph C. Audenried, will make the loan of forty-five hundred doll's to E. J. Sweet, to be secured by a first deed of trust on the house next to your father's, on M street, which deed of trust is to be accompanied by policy of insurance for at least four thousand doll's. I have fully instructed Mr. Ashford. In the matter of the L st. houses I find that you will owe me between $59,000 & $60,000. Suppose you make the trade and hand me over $30,000 cash. What have you as safe (first lien) to offer me on which the balance could be placed at 8 %? If you answer this to my satisfaction I may be able to help you

out without visiting Washington this week. I am detained on Monday next by law suit, but will be with you on Tuesday.

Yours, truly,

J. T. AUDENRIED.

5 5 4 EXHIBIT J. B. L., No. 13.—*Filed June 8th*, 1878.

(Memorandum in pencil:) Ex'd for $5,000 notes, J. B. & C. Add. sec. for other s. notes.

505 *Depositions behalf def't Williams.—Filed Nov.* 11, '78.

In the supreme court of the Dist. of Columbia.

W. B. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. In equity.

Testimony on behalf of the defendant, Samuel T. Williams.

APRIL 17TH, 1878.

Met pursuant to notice. Present, Jas. S. Edwards, on behalf of the complainants, and Mr. Wm. A. Maury and Mr. R. K. Elliott, on behalf of the defendant Williams.

SAMUEL T. WILLIAMS, having been duly sworn, was examined and testified as follows:

By Mr. ELLIOTT:

1. Q. State where you reside.

A. In Prince George's County, Maryland, in the summer, and in Washington during the winter.

2. Q. Are you one of the defendants in this case?

A. I am.

3. Q. Are you the party named in the deed of trust bearing date 27th September, 1876 (marked Exhibit J. N. O., number 2, filed in this case)?

A. Yes, sir.

506 4. Q. State whether you are the holder of the note for $5,000 described in that deed of trust.

A. I was.

5. Q. State what consideration, if any, you gave for that note.

A. I gave the sum of $5,000 by check.

6. Q. To whom did you deliver the check, and to whom was it payable?

A. I delivered it to Charles T. Davis, and it was payable to his order.

7. Q. State fully all the circumstances, within your knowledge, connected with the loan of $5,000 upon the property described in that trust.

A. I was informed by Charles T. Davis that he had a good loan of $5,000 to offer; at least he desired me to lend the sum of $5,000 on good property, assuring me that there was no encumbrance on the property; and on his assurance I agreed to make the loan, stipulating, of course, that it should be made to appear to my satisfaction that there was no incumbrance on the property. And on its being made to appear to me

that there was no encumbrance, I loaned the $5,000, by check, to Mr. Davis. I required an abstract of title from Mr. Ashford, which
507 was furnished me. There were no special circumstances connected with the loan other than those.

8. Q. Did you know that the abstract was prepared by Mr. Ashford?

A. I did; I recognized his handwriting, with which I am familiar; at least I believe it to be his handwriting.

9. Q. Have you that abstract with you?

A. I have not; a copy was furnished me.

10. Q. Did you see the original?

A, I saw the original?

11. Q. What has become of the copy?

A. I do not know. I saw it in the possession of Charles T. Davis.

12. Q. Where did you see the original?

A. At Mr. Davis' office, on 7th street.

13. Q. Was your check for $5,000 paid?

A. It was.

14. Q. Have you the check in your possession?

A. I believe it was returned to me with my checks on settlement, and I suppose I have it in my possession at home; at least, I have had it.

15. Q. State whether the interest upon that note was paid as stipulated.

A. It was paid for a time.

16. Q. When it was not paid what did you do?

A. I gave orders to the trustees to sell the property, because of default in payment.

508 17. Q. Did they sell it?

A. They did.

18. Q. What next? Detail the circumstances as briefly as possible.

A. In July, 1877, if I remember correctly, they sold this property to Mr. Eli S. Blackwood, who gave a note, I think, payable to the order of the trustees for the amount of the deferred payment.

19. Q. State how much that was.

A. I believe it was $5,000, but I am not sure: I really do not remember distinctly, but my recollection is that it was for the sum of $5,000.

20. Q. The amount of the original note?

A. The amount of the original note.

21. Q. Was any portion of the original note paid by the proceeds of the sale?

A. That is more within the knowledge of the trustees than of myself. I believe there was a portion of the original note paid.

22. Q. Of the principal of the note?

A. My recollection is that the last note is for $5,000, but I do not recollect distinctly.

23. Q. What was the first note for?

A. The first note was for $5,000.

24. Q. If the first note was for $5,000 and the last note was
509 for $5,000, was any portion of the principal sum advanced by you paid by the proceeds of the sale?

A. I should say not. I do not recollect the amount of the last note.

25. Q. Have you the last note in your possession?

A. It is now, I believe, in the bank of Riggs and Co.

26. Q. Have you parted with the ownership of that note?

A. I have not.

27. Q. Have you received anything on account of it?

A. No; I have received no interest whatever on the note.

28. Q. Have you received anything on the principal?

A. I have not.

29. Q. Then your original loan remains unpaid, does it not?

(Mr. Edwards objects to the form of the question.)

A. It does.

30. Q. Has anything ever been paid upon the original note for $5,000 other than the interest?

A. Not to my knowledge.

31. Q. Did you receive the interest upon that loan up to the day of sale?

A. I did.

32. Q. Out of the proceeds of the sale, or otherwise?

510 A. Out of the proceeds of the sale.

33. Q. Had you any knowledge, information, or belief at the time you advanced $5,000 upon the security of this property, as you have testified, that a prior deed of trust (Complainant's Exhibit No. 1) in favor of Charles T. Davis and William Stickney, as trustees, had not been satisfied by the payment of the debt thereby secured?

A. I had no such knowledge.

34. Q. Had you any reason to believe or suspect at the time you made the loan of $5,000 that there was any prior unsatisfied encumbrance upon the property?

A. I had not; on the contrary I was assured that there was no encumbrance on the property. I believed that assurance, which was confirmed in my opinion by the abstract of title furnished by Mr. Ashford.

Cross-examination by Mr. EDWARDS:

35. X Q. What was your occupation at the time this loan was negotiated?

A. I had no occupation at that time.

511 36. X Q. Did you ever practice law; if so, how long, and at what place?

A. I did; I practiced in the city of Baltimore five years, and in the city of Washington three or four years, perhaps; I do not remember exactly.

37. X Q. Who prepared and wrote your original answer filed in this case?

A. I did.

38. X Q. Have you not had a large and varied experience in commercial transactions, and have you not loaned considerable money in this District on real estate security?

A. I have had some experience in commercial transactions, not to any very large extent, and I have loaned considerable money in this District on real estate.

39. X Q. When you loaned this money in Sept., 1876, where were you then residing?

A. In Prince George's County, Maryland.

40. X Q. What was your post-office address?

A. My post-office address was Washington.

41. X Q. Had you no post-office address in Prince George's County at that time?

(Objected to by Mr. Elliot, because he has said that his post-office address was Washington.)

A. I had not. I was not in the habit of receiving letters there.

512 42. X Q. When was your attention first called to this loan, or to the fact that such a loan was desired?

A. It could not have been more than a week before I advanced the money; the precise time I do not remember, but it was but a few days before the money was advanced by me.

43. X Q. How was your attention first called to this application?

A. Charles T. Davis first mentioned it to me.

44. X Q. Where were you at the time?

A. In his office.

45. X Q. How came you to call there?

A. I had made several loans through him; I had business with him at various times in reference to loans that I had made at his request, and it was one of the calls in reference to other business, probably, that I had with him—I do not remember at this moment what—when he called my attention to this loan which he wished me to make.

46. X Q. After you called, what did you do in relation to this $5,000 loan of September, 1876?

A. I did nothing at all until the time came to advance the money.

47. X Q. Did you not examine the property?

A. I did.

513 48. X Q. Did you personally inspect the premises?

A. I did.

49. X Q. Did you go into the house?

A. I did.

50. X Q. Did you have any consultation with any one on the premises; if so, with whom?

A. I was taken there by Charles T. Davis, for the purpose of viewing the property, which he wished me to inspect. I saw no one else.

51. X Q. Did you know, at the time, who lived in that house; or, was anything said to you by Davis in respect to who occupied it?

A. I have no recollection that anything was said on that subject; there may have been.

52. X Q. After your attention was called to this matter by Mr. Davis, as you have stated, when did you and he next consult about it, and what occurred?

A. I have no recollection of any special consultation in reference to the matter; he wished me to continue. He told me that there was no encumbrance. He had promised me, at my request, to procure an abstract of title from Mr. Ashford. I waited a sight of this abstract of title before advancing the money. I had no consultation with him on the subject that I remember until I saw this abstract.

53. X Q. Did you give any instructions to any one in regard to

514 the details of the negotiation of this loan, that is, as to the amount

you would be willing to loan on the property, the time, the rate of interest, how payable, &c.?

A. I gave no instructions to any one. I was requested to loan the money for a certain time, at a certain rate, and I gave no instructions in reference to it.

54. X Q. Who prepared the papers in relation to this transaction?

A. I do not know; I received them at the office of Charles T. Davis; who drew them, I do not know.

55. X Q. After that deed of trust was prepared, when did you first see it?

A. I believe on the day when the money was advanced, which I believe was the 28th Sept., 1876.

56. X Q. Are you positive that prior to the 28th Sept., 1876, you never saw that deed of trust?

A. Yes, I am positive. I have no recollection whatever of ever having seen it before that time.

57. X Q. On that day what other papers did you see, if any?

A. I saw the release of a previous deed of trust executed by Wm. Stickney and Charles T. Davis, and the abstract of title signed by M. Ashford.

58. X Q. Was that before or after those deeds were recorded?

515 A. After they were recorded.

59. X Q. Where did you see them?

A. At the office of Charles T. Davis.

60. X Q. Are you positive of that?

A. Quite positive.

61. X Q. You are positive that on the 28th day of September, 1876, those deeds were recorded, and on that day you saw them in the office of Charles T. Davis?

A. No; probably not after they were recorded. I imagine that I received a receipt for the recorded deed which had been shown me, probably before that on the same day. Of course I could not have seen the recorded deed after it was recorded.

62. X Q. Then what do I understand from you in respect of the time you saw this deed of trust to Elliot and Davis to secure your $5,000 note, and the deed of release from Stickney and Davis, whether it was before or after they were recorded?

A. I believe that I saw the deed of trust, perhaps some hours before the transaction was completed; but, later, I saw the abstract of title by Mr. Ashford, he assuring me that that deed of trust was on record, because his abstract showed that that deed of trust was on record. It was my

516 practice to require that the deed of trust should be on record before I loaned the money, and it was done on that occasion.

63. X Q. Who delivered to you, or did you in fact receive, that deed of trust from the hands of any one on the day you paid that money?

A. Do you mean that I received it into my possession to retain? It was shown to me, but I did not receive it for record. Certainly I have no recollection of having seen it prior to that date, and believe I did not see it prior to that date. It was left in my possession on that day, and I did not receive it until weeks afterwards, probably, I do not remember how long afterwards, from the recorder's office. It is my impression that

I myself received it from the record office later. It was not delivered to me on that day to be retained in my possession.

64. X Q. Did you go to the record office on that day to see whether the trust or the release was placed on record?

A. I did not.

65. X Q. Do you know who put them there?

A. I do not.

66. X Q. In whose possession were they when you last saw them that day?

517 A. In the possession of Charles T. Davis, or his clerk—Sidney Smith, I think, was his name.

67. X Q. When did you first see the abstract or certificate of title from Mr. Ashford?

A. I believe it was on the 28th September. It may have been the evening of the 27th, but my recollection is that it was some time on the 28th.

68. X Q. Are you positive that you did not see the original certificate of title of Mr. Ashford prior to the 28th Sept., 1876?

A. Yes, I am positive, to the very best of my knowledge and recollection. I required only this abstract.

69. X Q. You have stated that you saw the abstract or certificate, the deed, and the release from Stickney and Davis, on the 28th Sept.; did you carefully examine them all that day and at the same time?

A. I have no positive recollection as to the deed of trust at this distance of time. I am positive, of course, that I saw the abstract made by Mr. Ashford. I am positive, at least it is my impression very strongly, that I saw the deed of trust; but as to whether I saw the deed of release, or whether the receipt for the release merely was handed me, I do not know.

518 I know that I saw the deed of trust, probably that morning, and I know that I saw and received a receipt for the deed of trust, and saw the abstract of Mr. Ashford. As to the other paper, I have no distinct recollection. I am not sure that I ever saw it.

Mr. ELLIOT. The counsel asked you whether you had examined those papers.

(Counsel for complainants objects to any suggestions from counsel for the witness while he is under cross-examination.)

Mr. ELLIOT. I say let him object.

WITNESS. (Continuing his answer.) I would add, that I probably confused in my mind those two papers, the release and deed of trust. As to the release, I have no recollection, when I come to think of it, that I ever saw it; my impression is that I never did. The deed of trust and the abstract I certainly did see.

71. X Q. What hour in the day of the 28th Sept., 1876, did you first call on Charles T. Davis in relation to this matter?

A. Probably about 11 o'clock, but I am not absolutely sure.

72. X Q. Did you again call upon him that day in relation to this matter?

A. I think I made but one call on him on that day.

519 73. X Q. Are you positive of that?

A. I think I am; I called by previous appointment, and I think I made but one call upon him on that day.

74. X Q. How was that previous appointment communicated to you?

A. In person.

75. X Q. When?

A. It may have been the day before, or possibly a day or two before, I am not sure.

76. X Q. Where was it?

A. In his office.

77. X Q. From whom did you receive the receipt for the deed of trust?

A. I believe I received it from Davis.

78. X Q. When?

A. On the same day when I advanced the money.

79. X Q. When you first called there that day, had the trust been recorded?

A. I do not know. I only know that while there I received a receipt for the recorded deed of trust.

80. X Q. Please state to the best of your recollection what occurred when you first went into Mr. Davis' office on this day, in relation to the matter?

520 A. Really that is a difficult question to answer. The business was a simple one. It was to advance a certain sum of money on receipt of a certain deed of trust and a certain abstract of title, or at least an abstract of title, for I did not receive a deed of trust. The abstract of title was handed me. That abstract contained a record of the recorded deed of trust in my favor to secure the note given for the money that I was about to advance; I was satisfied with that, and accordingly gave a check for the amount required. That was the whole transaction.

81. X Q. Do I understand you to say that you never read or examined your trust deed before it was recorded?

A. I must have done so, but when I do not remember.

82. X Q. Do I understand you to say that that is the only paper that you ever saw in relation to this transaction prior to handing your $5,000 check to Mr. Charles T. Davis?

A. Yes, sir; to the best of my knowledge that was the only paper, with the exception of the abstract, which I afterwards received.

83. X Q. My question is confined to a time prior to the payment of that check by you to Mr. Davis. Did you or not see the certificate of title of Mr. Ashford prior to that time?

521 WITNESS. Prior to handing the check to Mr. Davis?

Mr. EDWARDS. Yes.

A. I did, unquestionably; otherwise I should never have handed him the check.

84. X Q. How long prior?

A. Probably but a few minutes.

85. X Q. Was that the first time you ever saw it?

WITNESS. Ever saw what?

Mr. EDWARDS. That abstract or certificate.

A. It was.

86. X Q. Are you positive of that?

A. Absolutely.

87. X Q. After you arrived at Mr. Davis' office, did either he or you leave the office until you gave him the check?

A. No, sir; neither of us, to my knowledge.

88. X Q. How long were you in Davis' office during this transaction, on the 28th Sept., 1876?

A. It may have been half an hour. I have no distinct recollection of the time.

89. X Q. Please state particularly what papers you received from Davis at this time in relation to this loan?

A. I received the abstract of title, or a copy of it, at least, the
522 original of which I had inspected, and I received the receipt for the recorded deed of trust. Those are the only papers I received of which I have any recollection.

90. X Q. How about the note?

A. Oh! also the note, of course; the note given for the amount which I advanced ($5,000).

91. X Q. How about the insurance papers? Did you not receive a policy of insurance?

A. Well, sir, my memory failed me there. I probably did receive at the same time a policy of insurance; whether I received it just at that time I am not sure, but I suppose I did. I was always particular to receive all the papers at the same time.

92. X Q. Are you positive that you received a policy of insurance on this property at that time?

A. I suppose I did; I believe I did, as I was in the habit of requiring those papers to be ready before handing a check, and I probably would not have given the check without having received the policy of insurance. It was my practice to require the delivery of all such papers at once. I have no distinct recollection of the paper or when I received it.

93. X Q. Why did you not retain the original certificate of title?

523 A. My impression is that Mr. Davis asked me whether I required the original, or whether I would take a copy, he retaining the original in his safe. I told him that as I had seen the original I was satisfied; that a copy would be sufficient for my purpose.

94. X Q. When did you receive that copy?

(Mr. Elliot objects to the question, as having been already answered.)

A. I suppose and believe I received it at the same time with the other papers.

95. X Q. Do you know who made that copy?

A. I think it was his clerk, Sidney Smith, if I remember his handwriting.

96. X Q. Do you know when it was made?

A. I do not. I did not see it made.

97. X Q. How long after you went in the office of Davis on this day was it until you saw the original abstract of title?

(Question objected to by Mr. Elliot as immaterial, in view of the preceding testimony.)

A. I have no distinct recollection of the lapse of time. It may have been a few minutes. I do not know.

98. X Q. Did he tell you when he came in that he had the papers all ready, or did you wait for any papers?

524 A. I have no distinct recollection of that. I may have waited awhile.

99 X Q. Were any papers, to your knowledge, sent by Davis to any one, in relation to this transaction, while you were in the office?

A. I do not know.

100. X Q. Are you positive that you saw a receipt for the Stickney and Davis release you speak of on the day you gave this $5,000 check to Davis?

A. I am not positive.

101. X Q. Did not Davis, prior to the 28th Sept., 1876, show you a certificate of title of this property, made by Mr. Ashford?

A. He did not, to my knowledge.

102. X Q. Are you positive in this respect?

A. Yes, I am quite positive; I have no recollection of ever having seen any abstract of title previous to that day.

103. X Q. The copy of Mr. Ashford's abstract or certificate, filed by you as an exhibit to your original answer, shows a deed of trust to Charles T. Davis and William Stickney, to secure $8,000 to Augustus Davis. What inquiry, if any, did you make in relation to that trust?

A. I never made any, for I did not know in whose favor the deed of trust was; I knew nothing of it.

525 104. X Q. You have stated that you saw this certificate of title. Did you not read it?

A. I did. Before seeing it, I will add that I have no knowledge that I had any idea in whose favor this previous deed of trust was given.

105. X Q. Did you make any inquiry of any one in relation to it?

A. I did not. I relied wholly upon the certificate of title given by Mr. Ashford.

106. X Q. Did you examine the trust to Davis and Stickney, mentioned in this certificate, in the record office?

A. I did not.

107. X Q. Are you positive that Davis did not show you a release of that trust prior to the time you handed him the check?

A. Yes, sir; I am quite positive. I relied wholly upon the certificate of title of Mr. Ashford as security for the advance of my money. I have no recollection of having seen any other paper but his certificate of title with reference to this matter.

108. X Q. Who selected or designated the trustees, under the trust of September, 1876, to secure your $5,000 loan?

A. Those trustees were Elliot and Davis. I selected Mr. Elliot, leaving the other trustees to be selected by the other party, probably.

526 109. X Q. To whom did you communicate that selection?

A. To Mr. Davis.

110. X Q. Did you not instruct him to insert the name of R. K. Elliot as one of the trustees under that trust?

A. I did.

111. X Q. When did you give him those instructions or directions?

A. I really do not remember; some time previous to the drawing of the deed; I have no recollection of the precise time.

112. X Q. Did you not, on the 27th Sept., 1876, examine that deed of trust?

A. As I have said before, my recollection is that I did not see the paper until the 28th.

113. X Q. You stated that you did not see this paper after you handed the check to Davis, and not for some days or week' thereafter; then you must have seen it prior to the time it was recorded?

(Question objected to by Mr. Elliot.)

A. I certainly saw it at some time; I believe previous to its record, but precisely when I do not remember; probably on the morning of the 28th, but of that I am not absolutely positive. I think it was the morning of the 28th.

527 114. X Q. Did not Davis, on the morning of the 28th, or on the 28th, while you were in his office, send that trust and the Stickney and Davis release to the office of the recorder of deeds to be recorded?

A. That I do not know.

115. X Q. Can you state that he did not?

(Mr. Elliot objects to witness testifying what Davis did not do.)

A. I cannot state what he did not do.

116. X Q. Did not Davis on that day show you a receipt for this Stickney and Davis release?

A. I do not know; I have no recollection that he did; I know that I saw the certificate of Mr. Ashford; I know that I relied upon the certificate; that I required nothing more, and I think it highly improbable that I saw any other papers, such as you have mentioned.

117. X Q. During the negotiation of this $5,000 loan did you have any conversation or correspondence with Mrs. Addie M. Sweet, the maker of the note, and the owner of the property?

A. I did not.

118. X Q. Did you ever speak or write to her about it?

A. I did not.

119. X Q. Do you know her?

A. I do not.

120. X Q. During such negotiation, did you ever have any con-
528 versation or correspondence with her husband, Mr. Edwin J. Sweet?

A. No; I did not.

121. X Q. Did you know him at that time?

A. I did not.

122. X Q. Did you call upon Mr. Ashford in person in reference to the examination of this title, or have any conversation with him about it?

A. I did not.

(Mr. Edwards requests witness to produce the $5,000 check referred to in the testimony, and the stub in his check-book corresponding with the same.)

Adjourned to 2 p. m. Monday, April 22d, 1878.

APRIL 22d, 1878.

Met pursuant to adjournment. Present, Mr. Edwards, for complainants; Mr. Callaghan, for d'f't Sweet, and Mr. Charles A. Elliot, for defendants Davis, and Mr. William A. Maury and Mr. R. K. Elliot, for defendant Samuel T. Williams.

Continuance of Samuel T. Williams.

By Mr. EDWARDS:

123. X Q. Have you brought with you the check and stub that I requested at our last session?

A. I have.

529 (Witness produces the check, and exhibits a stub in his check-book.)

124. X Q. Will you read the check and endorsement thereon?

A. (Reading.)

No. 185.] WASHINGTON, D. C., *Sept* 28, 1876.

RIGGS AND CO.

Pay to Charles T. Davis or order five thousand dollars.

$5,000.] SAMUEL T. WILLIAMS.

(Endorsed:) CHARLES T. DAVIS.

125. X Q. Will you please read the stub opposite where the blank of this check was?

A. (Reading.) No. 185. September 28, 1876. Charles T. Davis (loan to Addie M. Sweet), $5,000.

126. X Q. Do you know Charles T. Davis' handwriting?

A. I do.

127. X Q. Is that his signature on the back of that check?

A. It is.

128. X Q. When you made this negotiation did you have this property surveyed for the purpose of ascertaining the size of the lot and its location?

A. I did not.

530 129. X Q. Did you see a plat of this lot at the time you made this loan?

A. I have no recollection of having seen a plat of it, although I may have done so. I have frequently examined plats in person in reference to loans that I have made, but in this particular case I cannot state positively.

130. X Q. You stated that you and Charles T. Davis went to examine this property, and that you went into the house with him; from where did you start?

A. I do not remember.

131. X Q. Did you walk or ride?

A. I think I rode?

132. X. Q. With whom?

A. With Charles T. Davis. I accompanied him there on foot or in a carriage, I really do not remember which; but I think I rode.

133. X Q. When you got to the house did Davis ring the bell, or did he pass in without ringing?

A. My impression is that he had a key, and entered the house without ringing.

134. X Q. Can you describe the internal arrangement of that house?

A. I cannot very distinctly. I passed through it with him.

135. X Q. In how many rooms did you go, and describe them?

531 A. I really cannot say. I will say that I am somewhat uncertain as to the particulars of this, because of having made a loan on a similar house in the same square but a few doors from this house, and I probably confound the examination of the two houses. The houses were similar, and I saw them both in company with Charles T. Davis, at his request, so that as to the particulars I cannot state positively.

136. X Q. Was the other loan you speak of made before or after this one?

A. After, to the best of my knowledge and belief.

137. X Q. What loan was that?

A. That was to Seth A. Terry.

138. X Q. Did you go into the parlors of what you considered the the Sweet house, or the house upon which this loan was placed?

A. I believe I did. I made with Mr. Davis a general inspection of the house, how far I really cannot remember. The matter has become indistinct in my mind.

139. X Q. Was the parlor a saloon parlor, or did it have folding doors, so as to form two rooms when the doors were closed?

A. That I do not remember. My recollection of locality and places is never very good; I am easily lost.

532 140. X Q. Do you recollect whether or not there was a mirror over the mantel in either of the parlors, if there was more than one parlor?

A. I have no recollection of it at all. I might have gone into that house half a dozen times without any distinct recollection of any room in it.

141. X Q. Did you attend the sale of this property by Elliot and Davis last July?

A. I did.

142. X Q. Was the house that was then sold the house that you and Davis went into when this loan was negotiated?

A. To the best of my knowledge it was. As I say, having examined with Mr. Davis, to the best of my knowledge and belief, two houses in the same square, very similar in appearance and size, I may have confounded the two houses. It is certainly very strongly my impression, and I believe that I inspected this house as I inspected the house of Mr. Terry. If I am mistaken I can only say that I have a very bad memory of locality, as I said before.

143. X Q. Is not the Terry house in a separate block?

A. Yes, in a separate block of houses, in the same square.

533 144. X Q. Is there anything in your memory whereby you can identify the internal arrangement of the Sweet house with the one you went into in September, 1876?

A. There is nothing. I will add that it is possible that I never saw the inside of that particular house. I will go so far as that, but that I examined houses in that row under the impression that it was this house I fully believe; I may be mistaken.

145. X Q. When you left with Davis, or accompanied him to inspect this property, was it not for the purposes of inspection of the property upon which you intended to loan money?

A. It certainly was, if I saw it. As I say, I may so far confound this with the house of Seth A. Terry that really I cannot speak with any perfect definiteness about it, for time has gone past, and memory fails and becomes indistinct.

146. X Q. Was the house furnished that you went into?

A. I believe it was; I am confident it was.

147. X Q. Was the Terry house furnished?

A. I really do not know. This was in September, 1876, and I have a very indistinct recollection of the inside of any house that I saw that long ago.

534 148. X Q. The check for $5,000 that you gave to Charles T. Davis, as you have testified, was intended by you as payment to Mrs. Addie M. Sweet for her note of $5,000 to your order, was it not?

A. It was.

149. X Q. You have stated that you had no conversation or correspondence with Mrs. Addie M. Sweet, the maker of the note, and owner of the property at the time of the negotiation of the loan; did you have any instruction or authority from her to pay the money or the check you gave for the note to Charles T. Davis?

A. No direct written instructions, but what I considered as full power of attorney—that is, a deed of trust on the property securing the note, and the note itself. That I considered sufficient authority to pay the money.

150. X Q. Then I understand you to state that the possession of the note and deed of trust from Davis was your authority solely for the payment of the money or the delivery of the check to Davis?

A. The only written authority. I had also his assurance, he being agent of the party borrowing the money.

151. X Q. How do you know that he was the agent of the party borrowing the money, and from where did you obtain your information?

535 A. I regarded him naturally as the agent, inasmuch as he had proposed to make this loan; had furnished me with a certificate of title of the property; had furnished me with the note of Addie M. Sweet, and had also furnished me with the deed of trust.

152. X Q. Had you any information other than the declarations of Davis, that he was Mrs. Sweet's agent in this transaction?

A. Nothing more than the papers I have mentioned, which were satisfactory to me.

153. X Q. Have you not stated that the abstract of title was furnished under your instructions?

(Mr. R. K. Elliot objects to the question, and instructs witness not to answer, because it appears from the reading of answer referred to by the counsel—answer to the cross-q. 52—that witness did not instruct Davis to procure the abstract.)

A. I say this: I have no objection to say in answer to the question that I have already answered a similar question, or have already stated in a previous examination that I requested Charles T. Davis to furnish me with an abstract. According to my universal and invariable custom in making loans on real estate, I have always requested the attorney of the

536 other party (as Charles T. Davis was in this instance) to furnish me with such an abstract.

154. X Q. How do you know that Charles T. Davis was the attorney of the other party in this instance?

(Question objected to by Mr. R. K. Elliot, as having been already answered.)

A. There are strong circumstances which showed me that he was the agent of the other party. For example, an agent with reference to a loan requires commissions; Charles T. Davis required no commission from me, but I had reason to believe, as he proposed this loan to me that he was commissioned by the other party, and that the other party would pay him for his trouble. Further, as proof of his commission it seemed to me he furnished the note of the other party, and the deed of trust signed by the

other party (the borrower); that, in my mind, was sufficient to prove that he was the agent of that other party; he certainly was never my agent.

155. X Q. Did you ever pay any one commissions for negotiating a loan for you, you being the lender?

A. I never did.

156. X Q. Were you ever applied to for commissions for ne-
537 gotiation of a loan for you by Charles T. Davis?

A. I was not.

157. X Q. What authority have you for stating that an agent charges commission to the party making the loan?

A. I have no authority for anything of the kind.

158. X Q. Did you not so state in your former answer?

A. I did not. I stated that he was not my agent in order to show that he was the agent of some one else (the borrower) and not mine. I stated that he received nothing whatever from me; that was my only idea in the matter.

159. X Q. Did you have any instructions or authority from Mr. Sweet to deliver that check to Davis, or to make it payable to his order?

A. I did not.

160. X Q. Had you in fact any evidence that Davis was the agent of Mrs. Sweet, or authorized to act for her in any manner, other than the fact of his having possession of the trust and this $5,000 note?

A. No; I had no other evidences.

161. X Q. Have you ever had any conversation with, or received any communication from, or written to Mrs. Addie M. Sweet in relation to this $5,000 note, or the interest thereon?

A. Never, in regard to that or any other subject.

538 162. X Q. Did you ever see Mrs. Addie M. Sweet write?

A. I never did.

163. X Q. Did you know her signature when you took the $5,000 note in September, 1876?

A. Not of my own knowledge; my reason for believing it to be her signature was that I had seen a deed of trust with her signature certified by a notary public. I myself had no knowledge of her handwriting.

164. X Q. Have you ever loaned money on deeds of trusts with promissory notes of hers prior to this transaction?

A. No, sir.

165. X Q. Did you know at the time you took this $5,000 note of September, 1876, through any information derived from her or her husband, that she desired to borrow any money?

A. No, sir.

166. X Q. Did you ever receive any letters or written memoranda from, or write to, Charles T. Davis in regard to the negotiation of this loan of September 28, 1876?

A. Not to my knowledge or recollection.

167. X Q. Have you ever had any correspondence with him (Davis) in relation to this $5,000 Sweet note, either before or since you received it from him?

539 A. Not until I had the intention of selling the property on default of payment of interest; it is my impression that I then sev-

eral times called the attention of Charles T. Davis to the default and spoke of proceedings against the property.

168. X Q. Did you write to him?

A. It is my impression that I did. I certainly spoke to him and I think I wrote to him on the subject. I know I communicated with him.

169. X Q. Since you received this note have you ever had any conversation with Charles T. Davis in relation to the interest thereon?

A. You mean the first note?

170. X Q. Yes.

A. Frequently.

171. X Q. During the month of September, 1876, how often did you come to this city from your country residence in Prince George's County, Maryland?

A. I really do not remember. I came to the city frequently, two or three times a week.

172. X Q. How far is this country residence of yours from Washington City?

A. From the gate to the railroad station it is said to be four miles, less about 200 yards.

173. X Q. Can you approach this residence of yours by railroad and by conveyance?

540 A. Both by rail and by turnpike.

174. X Q. You state that you required an abstract of title from Mr. Ashford?

A. I did.

175. X Q. To whom did you communicate your request or instructions in regard this abstract?

A. Charles T. Davis.

176. X Q. Was an abstract furnished you by Mr. Ashford in pursuance of such instruction?

A. There was an abstract furnished which I had in my possession at the office of Charles T. Davis. I did not retain it, but took a copy of it. Charles T. Davis asking me whether I preferred the original or a copy, I told him he might keep the original in his safe if he desired, which I believe he did.

177. X Q. Is the paper you filed as an exhibit with your original answer, a copy of the abstract so furnished under your instructions?

A. It is, to the best of my knowledge and belief.

178. X Q. When you read the original abstract, as you have stated, what disposition did you make of it?

(Question objected to by Mr. R. K. Elliot, as having already been answered, and he instructed the witness not to answer unless he thinks proper.)

541 A. I had this abstract in my possession which was handed me by Charles T. Davis, who suggested that if I did not desire the original he would give me a copy of it, which he did, and it was placed by him in his safe, to the best of my knowledge.

179. X Q. After you read it did you hand it back to Davis?

A. I did.

180. X Q. What did Davis then do with it?

(Mr. R. K. Elliot objects to the question as having been already answered, and instructs the witness not to answer.)

181. X Q. Did Mr. Davis immediately after receiving it from you put it in his safe?

(Question objected to by Mr. R. K. Elliot as having already been answered in substance.)

A. My impression is that I have already answered that question.

182. X Q. Do you decline to answer?

A. I do not; I will say to the best of my knowledge that he put it immediately in his safe; of that I am not certain, however.

183. X Q. Since the time you then handed it to Davis have you ever seen the original certificate or abstract of title?

A. I have not.

542 184. X Q. Did you ever compare the copy you filed with your answer with the original abstract?

A. I am confident I did; it is not possible that I did not.

185. X Q. Was the insurance of the buildings against fire on the lot upon which this $5,000 note was secured, a condition precedent by you in the negotiation of this loan?

A. It was.

186. X Q. What was the amount of insurance required?

A. I do not remember the exact amount of insurance.

187. X Q. In what company was the insurance placed?

A. I believe, but of that I am not sure, that it was in a Philadelphia company, of which Augustus Davis was then the agent; that is my impression.

188. X Q. Was Augustus Davis or Charles T. Davis then agent of that company?

A. Augustus Davis, I believe; Charles T. Davis afterwards became the agent.

189. X Q. Where is this policy of insurance?

A. I suppose I have it. I believe it is at my home in this city.

543 190. X Q. Have you any recollection of making any disposition of it since you received it?

A. I have not.

191. X Q. To whom did you communicate your instructions in relation to the insurance of this property?

A. I gave no instructions to any one. The insurance was promised as all the other papers in reference to the loan were promised. I probably requested that the property should be insured previous to the loan. I have always made that a condition precedent to all the loans I have made.

192. X Q. To whom did you communicate this request?

A. Chas. T. Davis.

193. X Q. A paper you filed with your answer purporting to be a copy of Mr. Ashford's certificate of title, mentions a certain release from Charles T. Davis and William Stickney to Addie M. Sweet. Did you ever examine this release or the record thereof?

A. I have an impression that I may have seen this release, but I am not quite sure about it. I have no recollection of having examined it. I relied for its contents and force on the certificate of Mr. Ashford.

194. X Q. What was there in the certificate of Mr. Ashford

544 showing anything in relation to its contents?

A. This certificate simply showed me that there was no encum-

brance upon the property, to the best of my recollection, and I believe that that certificate included a reference to this release; it must have done so. I have not the abstract before me, so I cannot say. (The witness is handed his answer in this case, with a copy of said abstract attached.) I find on reference to the copy of certificate of title, filed by me with my first answer, that reference is made in Mr. Ashford's certificate to the release signed by Charles T. Davis and William Stickney.

195. X Q. Is there anything on that certificate other than simply noting the fact that a release from Charles T. Davis and William Stickney, of the trust mentioned above, had been recorded September 28th, 1876?

(Mr. Elliot instructs the witness not to answer, as the paper speaks for itself.)

A. As the certificate itself states this fact, I think it unnecessary to answer that question.

196. X Q. Did you read the certificate of title before you handed Davis the five thousand dollar check?

A. I did.

545 197. X Q. After reading the original certificate of title, did you then hand Davis this check?

A. After I had all the papers in my possession which I have mentioned, including this certificate of title.

198. X Q. How long was it after reading the original certificate of title until you handed your check to Davis?

A. It is impossible for me to state; it may have been five minutes, and it may have been a minute and a half.

199. X Q. Was the delivery of the five thousand dollar Sweet note by Davis to you contemporaneous with your delivery of the five thousand dollar check to him?

A. I received the Sweet note before I drew my check.

200. X Q. How long before?

A. I cannot say.

201. X Q. Was it on the same day?

A. It was.

202. X Q. After receiving the note, how long did you remain with Davis, or in his office?

A. But a few minutes; I cannot say precisely how long.

203. X Q. You say you are quite positive you had in your possession on Sept. 28, 1876, the original abstract of title, and the trust

546 deed to Elliot and Charles T. Davis, but you are not sure that you received the insurance policy on that date, but supposed you did. Why is your recollection so clear in relation to the deed of trust and abstract, while you are so uncertain in relation to the insurance policy?

A. I simply supposed, as a matter of course, inasmuch as I always require a policy of insurance before I pay the money in any case of loan, that I must have had it at that time. I certainly did receive a policy of insurance—must have done so; I conclude that I did so from my invariable habit, before I paid the money.

(Question repeated.)

A. I hardly know how to say anything further on that subject. I know that I received a policy of insurance. I know that I received all

the other papers I have mentioned. The precise moment when I received each one I cannot state, but I know that I had all those papers in my possession before I paid the money. I certainly know that I had the abstract, the deed of trust, and the note in my possession, and I heartily believe that I had the policy of insurance. Why there is any in-
547 distinctness of recollection on that particular point I cannot say.

204. X Q. Then do I understand you to state that you are certain that you received the deed of trust, the abstract, and the policy of insurance before you handed your check to Davis?

A. I am very confident that I did. I can only say that I am quite positive of it. I have never made any exception in such cases to my usual course.

205. X Q. What requirements or conditions did you make during the negotiation of this loan in relation to taxes on the property?

A. I required that there should be no encumbrance of any kind on the property.

206. X Q. Did that include taxes?

A. I suppose it did. Sometimes I allowed taxes to remain on the property if they did not amount to a large sum, and sometimes I insisted that they should be paid.

207. X Q. What is your recollection in this respect in regard to this particular case?

A. My impression is, though I am not absolutely certain, that some of the taxes remained unpaid to a small amount.

208. X Q. Did you have any conversation with Davis in relation to the taxes; if so, state what it was?

A. I do not remember anything about that.

548 209. X Q. You also stated that, on the assurance of Charles T. Davis that there was no encumbrance on the property, you agreed to make the loan, stipulating of course that it should be made to appear to your satisfaction that there was no encumbrance on the property. Does not the paper, filed with your answer, purporting to be a copy from the original, show that the taxes on this property for 1875 and 1876 were unpaid, and constitute a lien on this property?

A. The certificate shows that the taxes for 1875 and 1876 were not paid. I imagine that on account of the magnitude of the loan I did not insist upon anything further in regard to the taxes; that I did not care whether they were paid or not.

210. X Q. Are you clear that you were willing that those taxes should remain unpaid?

A. I am, simply with reference to the certificate of title which states that they were unpaid, and sometimes I have allowed taxes to go unpaid if I considered the security sufficient; I suppose I did so in this case.

211. X Q. Are you positive in regard to that?

A. Yes.

212. X Q. That you did permit them to go unpaid?

A. In this particular case.

549 213. X Q. Did not Davis promise you that he would see that they were paid?

A. I have no recollection of anything of the sort.

214. X Q. Can you say that he did not?

A. I cannot say that he did not, but I believe he did not. I have no recollection of any conversation to that effect.

215. X Q. Then, if this paper be a correct copy, the original does not show that at the time you handed Davis your $5,000 check the property was free from all liens or encumbrances, does it?

A. It does not; it shows that it was sufficiently so for my purpose, probably. I considered the security sufficient, the property being in my estimation worth double the amount of the loan.

216. X Q. When did you last see the copy of the original abstract in the possession of Charles T. Davis?

A. About the time I gave him this check, or shortly before the conclusion of the transaction, with the other papers.

217. X Q. Are you positive that you received the copy before you handed him the check?

A. I am positive that I read the original before I handed him
550 the check. As to the precise moment when I received the copy I am not sure.

218. X Q. Will you state positively that you received that copy on the day that you gave that check to Davis?

(Question objected to by Mr. R. K. Elliot as having been already answered.)

A. It is my impression, and I believe that I did. What I chiefly considered important was, that the original showed that the property was unencumbered; as to the receipt of the copy, it was of no consequence to me.

219. X Q. Then you are not positive, I understand from your reply, in this particular?

A. Positive as to what?

220. X Q. That you received the copy of this abstract before you gave your check to Davis?

A. I believe I did; but in the multiplicity of these details, I have no perfectly absolute recollection of it; it is my impression that I did.

221. X Q. You say that the interest on the $5,000 note secured by the trust to Charles T. Davis and R. K. Elliot was paid up to a time; how much interest did you receive thereon, and who paid it to you?

A. The interest I received was paid at the bank of Riggs and
551 Co., where the note was deposited for collection. How much I received I don't precisely recollect; I can only say that the sale in July, 1877, was on account of the default in payment of the last six months' interest. The previous interest I had received at the bank of Riggs and Co.; it was paid at the bank; (after reflection) I could never have received any interest on the note; it was never paid to me; I find from reflection that no interest could have been paid on the debt, except that Mrs. Sweet, I remember, handed me about $25 on the street one day. I have no recollection of having ever received any other money by way of interest. The note was in bank; if any money was paid (as I believe there was none), it was paid into the bank of Riggs and Co. The note itself will show the exact truth; I am not speaking with positiveness about any of these things, except that I did receive a small amount from Mrs. Sweet.

222. X Q. Prior to this transaction of September, 1876, how long had you known Charles T. Davis?

A. I believe that was in the spring of 1876 that I first met him at your office; I had never seen him or known him before.

552 223. X Q. From the time you first became acquainted with him, up to the time of the negotiation of this loan, you were on intimate terms with him, were you not?

A. I was never on intimate terms with him at any time.

224. X Q. Up to the time of this transaction of September, 1876, you had explicit confidence in his honesty and integrity, and fully trusted him in all the loans you had previously made through him, did you not?

Mr. ELLIOT. I object to anybody swearing that he had explicit confidence in Charles T. Davis.

A. In answer I would say that I never had either explicit or implicit confidence in Charles T. Davis. I will add that I had full confidence in him on account of my knowledge or belief in the good character of his father, who introduced me to him. I know nothing of his character on any other ground; but I did believe him to be an honest man.

225. X Q. Had anything occurred prior to this transaction of September, 1876, to cause you to doubt his integrity or honesty in respect of any matters that he had transacted for you?

553 A. Nothing had ever occurred before that time to cause me to doubt him.

226. X Q. You trusted him the same and had the same confidence in his integrity and honesty in the negotiation of the Sweet loan, had you not?

A. I had entire confidence.

227. X Q. The paper you filed as a copy of Mr. Ashford's abstract of title shows that the release of Stickney and Davis was recorded on the same day, and cotemporaneous with your trust; do you know why it was not left for record or recorded before that?

A. I do not.

228. X Q. Did you make any enquiry of any person in regard to the recording of this release?

A. I did not.

229. X Q. Was or were any note or notes purporting to be secured by the trust of January 1, 1875, to Davis and Stickney to secure $8,000 to Augustus Davis, as set forth in the copy of Mr. Ashford's abstract filed with your answer, ever shown to you?

A. No such notes were ever shown to me.

230. X Q. Did you require the production thereof before you delivered your $5,000 check to Davis?

554 A. I did not, simply relying on the certificate of title to prove to me that no encumbrance existed, which was all I desired to know.

231. X Q. Had you, in fact, any evidence of the payment of the debt secured by the trust of January 1, 1875, to Davis and Stickney before mentioned when you delivered your $5,000 check to Davis other than what was contained in Mr. Ashford's certificate of title?

A. I had not.

232. X Q. Did you require or demand any other or additional evidence in this behalf?

A. I did not. I never in any case in which I have loaned money re-

quired any better evidence of the freedom of the property from encumbrance than I did in this case.

233. X Q. You say that your deed of trust was left in your possession on September 28, 1876. From whose hands did you then receive it?

(Question objected to by Mr. Elliot as having been already answered.)

A. It was handed to me for perusal and examination by Charles T. Davis.

234. X Q. What did you do with it after it was left with you on that occasion by Charles T. Davis?

A. My recollection is that I returned it to him in order that he
555 might send it to the record office to be recorded, and that I receive the receipt saying that the deed had been recorded on the same day. I certainly knew that it had been recorded by the receipt from the record office, which was handed to me before I paid the money.

235. X Q. You state that you received the receipt for this deed of trust before you left Davis' office on that day?

A. I do.

236. X Q. And that you read the deed of trust, as you state, and then handed it to Davis; that you were in Davis' office only on one occasion that day; then was not the deed of trust left for record between the time you read it and the time you received the receipt, and while you were in Davis' office?

A. I will state, in answer to that question, that there are so many circumstances in connection with such a transaction that it is impossible to recollect them all with perfect precision. I only know this, that I did see that deed of trust; that I did get a receipt for its record, and that both of these things preceded the payment of the money by me. The precise time when these things were done I don't know. At this distance of
556 time it is extremely difficult to recollect the precise points of such a transaction. I endeavored to do what I thought was best to guard my interests on that occasion.

237. X Q. You stated in your testimony given last Wednesday (page 14 original) that you did not go to the record office on the 28th September, 1876, to see whether the trust or the release was placed on record; that you do not know who put them there, and that when you last saw them they were in the possession of Charles T. Davis or his clerk, Sidney Smith. Do you know what became of this trust deed and release after you thus saw them in the possession of Davis or his clerk?

A. I do not. I was satisfied with seeing the receipts for the deeds, as every one is on such occasions, I believe invariably. I enquired no further. I have never pursued any other course in reference to loans I have made, and I believe that is the universal custom.

238. X Q. You state that you received the receipt of the recorder of deeds for the deed of trust from Davis on the day you advanced the money. Did you also receive from him or any one else the receipt of the recorder for the release?

557 A. I did. At this distance of time I don't remember whether I retained it in my possession, but I certainly saw it; else I would have had my doubts in regard to the transaction. However, I will say further, as I have said before, that I relied upon Mr. Ashford's abstract; and, as for my distinct recollection of points in reference to that release, I may be, and it is quite likely that I am, in error, but relying upon the

certificate of Mr. Ashford, I had no anxiety on the subject, and thought I acted as a prudent business man might in relying upon his abstract. I had seen all the papers which it is customary to examine in such cases, and I felt satisfied.

239. X Q. Can you state with the same positiveness that you do in regard to the receipt for the trust that you did in fact receive a receipt for the release.

A. I cannot state with the same positiveness.

240. X Q. Why not?

A. I have no positive recollection about the particular transaction. I do not know that I made any difference in regard to those certificates. The general impression on my mind is that I satisfied myself—I
558 certainly did satisfy myself—as to the validity of the transaction, else I should certainly have never paid they money; and I know the transaction would have been valid but for the unfortunate fact that those notes were not paid. The result, therefore, shows that I did the right thing in the matter according to my estimation. But for the improper appropriation of the money which I had paid (for which I certainly was not responsible) the transaction would have been perfectly valid.

241. X Q. What was the proper appropriation of that money?

A. I imagine that the proper appropriation was the delivering of it to Mrs. Addie M. Sweet, or to any one to whom she might direct that it should be delivered. It was intended for her.

242. X Q. Mr. Ashford's certificate showed that both the trust and release had been left for record on the same day. Why did you require a receipt for the trust from the recorder and not for the release?

(Question objected to by Mr. R. K. Elliot, because the witness had not stated that fact.)

A. If I made such a statement, I certainly had no intention of
559 doing so. I simply wished to be satisfied as to the fact that there was no encumbrance on the property. All that I thought was necessary for that purpose I did. The particulars of it have escaped my recollection to some extent.

243. X Q. You say that your trust deed is the only paper that you ever saw in relation to this transaction, prior to handing your $5,000 check to Mr. Charles T. Davis, to the best of your knowledge, with the exception of the abstract which you afterwards received. [See page 15, original.] How long was it after you saw the trust deed that you received the abstract?

A. I do not know.

244. X Q. You say that you are absolutely positive that the first time you saw the abstract of title was on the day, and probably but a few minutes before you handed Davis your $5,000 check, but you are not certain when you first saw the trust to Charles T. Davis and R. K. Elliot and cannot state when you read or examined it before it was recorded. Why is your recollection so clear in regard to the abstract, and so uncertain in relation to the trust.

A. I cannot explain the uncertainties of my memory on any subject.

560 245. X Q. Prior to this transaction of September, 1876, how

much money, in the aggregate, had you loaned in this District through Charles T. Davis?

A. I am not entirely sure, but I know I have loaned $8,500 at his request, and to various parties employed by him.

(Mr. Edwards requested witness to produce the policy of insurance on this property mentioned in his testimony, and states that after its production, his cross-examination is closed.)

Further cross-examination by Mr. CALLAGHAN for defendants Sweet.

246. X Q. At what time before the advertisement for sale under the deed of trust securing you this amount of $5,000, did you receive the $25 from Mr. Sweet, one of your codefendants, on account of interest?

A. The precise time I do not remember, but probaby two months previous to the sale.

247. X Q. Where was it paid to you?

A. It was handed to me on F st., between Sixth and Seventh, as I was returning home late in the afternoon, between four and five o'clock. I remember distinctly as to that, because of some other circumstances.

561 248. X Q. Will you please relate the circumstances as to how he came to pay you the interest at that time?

A. He was in default of payment of interest which was due, I believe in March, and finding the interest was not paid I called upon him for payment, and notified him in some way, I don't remember how, that I desired payment. I met him on several occasions in reference to the matter, whether before or after this payment of $25, I do not remember. I only know that he paid me $25, and I have no recollection of having ever received any other amount from him.

249. X Q. Was this payment made to you by him before or after your request to Charles T. Davis to see about the payment of interest?

A. After; if I made such requests, as I believe I did, knowing Mr. Sweet, or supposing him to be in frequent communication with Mr. Davis, it was more convenient for me to remind him of it through Mr. Davis, and I spoke to Mr. Davis about it on several occasions and I believe he spoke to Mr. Sweet.

250. X Q. On this occasion of the payment to you of this $25, did you accost Mr. Sweet, and make a request or demand for the money?

562 A. I did not. He accosted me on the street—I was in company at the time—and handed me some money, which he mentioned was $25 on account of this interest, and promised to pay the rest of the interest very soon; that is the whole transaction. Although, perhaps, immaterial to this case, I remember that there was an uncertainty about the sum of money. He handed me $15 by mistake, as he told me afterwards in a note; he said he had two rolls of money in his pocket at the same time for two different purposes. I reminded him by note, perhaps an hour or so after I had discovered the mistake, that he did not give me $25, but $15, and he immediately rectified the mistake; so that he paid me in fact $25.

By Mr. CHARLES A. ELLIOT for defendants Davis:

251. X Q. Mr. Davis' reputation for integrity and honesty was unquestioned up to the time of the negotiation of this loan, was it not?

A. So far as I know it was. I never heard any one question it.

Redirect examination by Mr. R. K. ELLIOT:

252. Q. You have been asked on cross-examination whether you are a lawyer, and I believe you said you were?

A. Yes.

563 253. Q. Are you familiar with section 447 of the Revised Statutes relating to the District of Columbia, which reads as follows: "SECTION 447. All deeds of trust and mortgages whenever delivered to the recorder of deeds for record, and all other conveyances, covenants, agreements, and deeds which shall not be acknowledged, proved, or certified, and delivered to the recorder for record within six months after the sealing and delivery thereof shall take effect and be valid as to all subsequent purchasers for valuable consideration without notice; and as to all creditors, from the time when such deed of trust or mortgage, or other conveyance, covenant, agreement, or deed shall have been so acknowledged, proved, or certified, and delivered to the recorder for record, and from that time only?"

(Question objected to by Mr. Edwards.)

A. Yes, sir.

254. Q. Then you knew more than some other people?

(Question objected to by Mr. Edwards.)

A. Well, that may be.

255. Q. According to the best of your recollection, the house sold on the 17th July last was one of the houses you visited in company

564 with Davis, was it not?

A. To the best of my knowledge and belief it was one of the houses. As I have said, in reference to this visit as in regard to many other things, at this distance of time I have no very distinct recollection about the details, but I believe what I have stated to be correct.

256. Q. You have stated on cross-examination that the transaction in controversy would have been valid if a proper appropriation of the money had been made; what do you mean by that?

(Question objected to by Mr. Edwards.)

A. I mean valid as to my interest.

257. Q. Had you anything to do with the application of the money?

(Question objected to by Mr. Edwards.)

A. I had not.

258. Q. You received the security from Charles T. Davis, and delivered to him a check for the money; had you anything else to do with it?

(Question objected to by Mr. Edwards.)

A. Nothing whatever. I knew nothing whatever of the disposition of the money.

259. Q. Did you ever make any other loans through agents of

565 persons where parties were waiting to borrow money?

A. I have with one other agent.

260. Q. With whom?

A. John F. Cox.

261. Q. What did you do in his case?

(Question objected to by Mr. Edwards.)

A. In regard to loans which I made through Mr. Cox, on several occasions, I made the check payable, as requested by Mr. Cox, whom I regarded as agent of the borrower, in different sums. Those checks were sometimes

two or three in number, on account of the necessity of settlement by the agent, Mr. Cox. I understand it to be and know it to be a frequent practice of real-estate agents in that particular to take the amount of the loan from the lender, either in several checks, or in cash, and to appropriate the money, as agent of the borrower, in payment of the various expenses, attorney's fees, taxes, insurance, and in the settlement of the indebtedness of the borrower.

Recross-examination by Mr. EDWARDS:

566 262. X Q. Had you any knowledge at the time you made this loan of the exact location of the property other than that derived from Charles T. Davis, when he purported to show you the property?

A. As to my personal inspection of the property, or of the locality, I only know from his having told me and shown me where it was. As to the locality by meets and bounds, I learned that from the papers that were shown me, and possibly by the inspection of the plat at his office, for he had plats at his office. I believe I did examine a plat at his office with reference to this property; no doubt I did.

263. X Q. To your knowledge, was any part of this $5,000 check appropriated by Davis toward the payment of any of the expenses incident to this transaction?

A. I have no knowledge whatever of the disposition of the $5,000.

264. X Q. Do you know how the premium for the insurance on the property was paid?

A. I do not.

265. X Q. Do you know who paid for recording the trust and the release?

A. I do not.

SAMUEL T. WILLIAMS.

Adjourned to 1 o'clock, Wed. 24, 1878.

567 APRIL 24, 1878.

Met pursuant to adjournment.

Present, Mr. Edwards, for complainant; Messrs. Wm. A. Maury and R. K. Elliot, for the defendant, Samuel T. Williams; C. A. Elliot, for the defendants Davis; and Mr. D. O'C. Callaghan, for the defendant Sweet.

M. ASHFORD, having been duly sworn, testified as follows:

By R. K. ELLIOT:

1. Q. Where do you reside?

A. In the city of Washington.

2. Q. What is your business?

A. I am a member of the bar.

3. Q. To what particular branch of the profession have you devoted your attention lately?

A. The examination of titles.

4. Q. How long have you been engaged in that particular branch of the profession?

A. Since 1867.

5. Q. Do you know Charles T. Davis?

A. Yes, sir.

6. Q. Have you examined titles at his request?

A. I have.

7. Q. Within what period?

568 Within the last three years?

8. Q. Have you furnished to him certificates or abstracts of titles, the result of your examinations?

A. A number of them.

9. Q. Did you in September, 1876, examine the title to sub-lot 49, in square 513?

A. I did.

10. Q. Do you make notes of your examinations of titles?

A. I do, and preserve the notes, generally.

11. Q. (Handing witness a paper.) Are those notes in your handwriting?

A. Yes, sir.

12. Q. Have you now the notes of your examination of title for this property, down to September 14, 1876?

(Question objected to by Mr. Edwards as leading.)

A. I have a rough pencil memorandum of my examination of the title to sub-lot 49, original 8, square 513.

13. Q. Was it prepared by yourself?

A. It was.

14. Q. State whether it is a correct reference to the title to that property?

A. It is, so far as the indices of the record show.

569 15. Q. What is the date of those notes?

A. The examination, as made according to my notes, was brought down to September 13, 1876.

16. Q. According to that examination, what was the condition of that title?

A. I reported the title good in Addie M. Sweet, subject to an encumbrance or deed of trust to Chas. T. Davis and William Stickney, of date January 1, 1875, recorded in liber 776, folio 48, to secure to Augustus Davis $8,000 in three notes, payable at one, two, and three years after date.

17. Q. At what rate of interest?

A. Eight per cent.

18. Q. Did you give a certificate to that effect to anybody?

A. I did originally issue a certificate I suppose as of that date, September 13, 1876.

19. Q. Did you issue that certificate on September 13th, or 14th?

(Question objected to by Mr. Edwards.)

A. As I say, about September 13, 1876, I issued the certificate; probably it was done the day after the 13th.

20. Q. Did you make a subsequent examination to the title of that lot, and if so, when?

570 The certificate was afterwards brought to me on the morning of the 28th of September, and with it a deed of release from Davis and Stickney, trustees, and a deed of trust from Addie M. Sweet and her husband, to Charles T. Davis and R. K. Elliot, trustees, to secure Samuel T. Williams $5,000. I was requested to examine these and append a

certificate that the trust I had previously certified as existing had been released, and to note that change.

21. Q. Did you note that change?

A. I did.

22. Q. Where were you at that time?

A. At the record office.

23. Q. In what manner or form did you note the change?

A. I cannot say; I presume in the usual form: "Since the above the only change is the following," and then note the release of the deed of trust. Sometimes I say, "Since the above, the encumbrance above has been released, and the only encumbrance now existing is" so and so.

24. Q. Do you recollect who applied to you for that additional certificate?

A. My recollection is that Charles T. Davis did. I saw nobody
571 else in connection with the matter but him.

25. Q. Was that memorandum of the change in the title in your handwriting?

A. Yes, sir.

26. Q. And signed by you?

A. Signed by me.

27. Q. Look at Exhibit S. T. W., No. 1, of the answer of the defendant Williams, and state whether that refreshes your recollection as to the form of that certificate.

A. I have no doubt this is a correct copy of the certificate I issued at the time. It is in the language I usually employ for certificates.

28. Q. Did you make any reference upon your prior notes of the examination of this title in reference to the change that you certified to on the 13th of September, 1876?

A. No, sir.

29. Q. Why did you not?

A. I will state that when I make an examination and certify it I generally file the notes away, and if the parties afterwards bring a release or anything of that kind to me at the record office, if it only goes back a month or so, I simply run down the register and give a certificate
572 without preserving any memorandum of the changes in the title, because I have not my notes before me at the record office.

30. Q. And you say that this application for this additional certificate was made at the record office?

A. Yes, sir.

By Mr. MAURY:

31. Q. You speak of making certificates at the record office. State what you mean, and why you made them there.

A. Almost daily I am engaged there from 10 o'clock until 3, and these people bring these things in, and I have not my notes of the title with me there. They generally bring the certificate that I have previously issued, and I take the date and run down the register and simply note the changes that have occurred in the intervening time without preserving any notes of it. I cannot take the time to go down to my office and get my notes. Such transactions occur sometimes three or four times a day.

Cross-examination by Mr. EDWARDS:

573 32. X Q. You state that you have with you the retained memorandum that you took in the examination of the title. Will you please read verbatim the notes thereof pertaining to the trust from Addie M. Sweet to Charles T. Davis and William Stickney?

Sub. 49. A. Addie M. Sweet et vir to Charles T. Davis and Wm. Stickney, D. T., Jan. 1, '75—Jan. 14, '75, 776–48; sec., Aug. Davis, $8,000, in 3 notes of $1,833.33 each, in 1, 2, and 3 years, and one for $2,500, in three years from Jan. 1, '75, int., 8 %, payable semi-annually Jan. 14, '75.

To Sweet.

33. X Q. Does not this memorandum of yours in relation to the trust to Davis and Stickney therein mentioned, include certain abbreviations?

A. Yes; it is shown so by my answer to the previous question.

34. X Q. Please read that memorandum in relation to this trust so that it may express what you intended to convey by that entry.

A. Addie M. Sweet and husband to Charles T. Davis and William Stickney, deed of trust, dated January 1st, 1875, recorded January 14, 1875, in liber 776, folio 48, to secure Augustus Davis $8,000, in three notes of $1,833.33 each, payable in one, two, and three years, and one note of $2,500, payable in three years from January 1, 1875, the

574 interest at 8 per cent. per annum, payable semi-annually.

35. X Q. Is the copy of the certificate of title purporting to have been furnished by you under date of September 14, 1876, a correct copy of your memorandum in respect of this deed of trust?

A. I presume not; the substance is the same, I guess.

36. X Q. Did you, in examining this title, read that deed of trust to Davis and Stickney?

A. I presume I did, so far as the property was concerned. It embraces the deed, and the indebtedness that was to be secured, the date, &c. It is not usual for me to read entirely through a deed of trust unless it is the basis of the title, and title is claimed through it.

37. X Q. So far as this memorandum of yours shows in relation to the examination of the title to this sub-lot 49, what was the date of your last examination?

A. September 13, 1876.

38. X Q. Have you any memorandum indicating that you certified as to the title of this property on September 14, 1876?

A. None, but these rough notes to which I have before referred.

575 39. X Q. Is there anything there indicating that you so certified?

A. No.

40. X Q. Have you any recollection in fact that you did furnish the certificate of title to this property on the 14th of September, 1876?

A. I have no recollection, particularly.

41. X Q. The memorandum that you have showing your notes in the examination of this title in this case shows that a subsequent examination was made. When were those memoranda entered on that paper?

A. To-day.

42. X Q. At whose request?

A. At the request of Mr. Elliot; that is, I did not make the entries at his request, but I made the examination at his request.

43. X Q. Have you any written memorandum whatever that you, in fact, examined the title to this property subsequent to September 13, 1876?

A. I have no memorandum of it, but I have not the slightest doubt that I did.

44. X Q. On an average how many titles do you examine in a week and furnish certificates thereof?

A. I suppose I issue two a day on an average.

45. X Q. Do you recollect upon what work you were employed
576 when you furnished the additional certificate as you state of September 28th, 1876?

A. I do not.

46. X Q. Have you any recollection in respect of the trust and release that particularly refreshes your mind in relation to this certificate of September 28th?

A. No.

47. X Q. Can you state positively that Charles T. Davis did call upon you on the 28th of September, 1876?

A. I felt satisfied that he did.

48. X Q. Had you not furnished certificates of title to him of a number of other lots in this square?

A. Yes; and that is what makes me believe he was in, because I am satisfied that nobody in respect to this property except Mr. Davis ever employed me.

49. X Q. Did he not often send his clerk to you in reference to this matter of examination?

A. Yes.

50. X Q. Can you state positively that he did not send his clerk with those two papers, the trust and release, of the 28th of September, 1876?

A. I cannot say positively that he did not. I considered that when his clerk came he came; it was the same thing. He spoke to me
577 about it first.

51. X Q. Did he state to you, when you first made this examination, for whom it was? Did you know for whom it was?

A. No.

52. X Q. When did you first learn of Mr. Samuel T. Williams in connection with this matter?

A. When the deed of trust was presented.

53. X Q. Subsequent to that did you ever have any conversation with Mr. Williams in respect to it?

A. I think not; I have no recollection of ever having any conversation with him on the subject at all.

54. X Q. Do you recollect of reading the release of the Stickney and Davis trust on the 28th of September, 1876?

A. I have no recollection of reading it, but I am satisfied I must have read it, or else I would not have noted it.

55. X Q. Do you know whether it was before or after it was left with the recorder?

A. It was at the time it was left. My recollection is that the papers

were submitted to me unrecorded, and that I noted them upon the certificate, and they were then delivered to the recorder for record.

56. X Q. Did you see them delivered?

578 A. I was present. I am satisfied that I did see them delivered, or else I should not have certified them as being recorded.

57. X Q. Do you remember where you wrote the additional memorandum following that under date of September 14th, 1876?

A. No; not definitely. I think it was in the deputy recorder's room.

58. X Q. Can you recollect to whom you handed it?

A. I handed it to Mr. Davis.

59. X Q. Are you sure of that?

A. No; I am not sure of it.

60. X Q. Might it not have been his clerk?

A. Yes; it might have been. I know that he saw me in connection with it, but whether it was the last time or not, I don't know; but I know he saw me personally in relation to that certificate.

61. X Q. Did you originally furnish a certificate of title, or did you in fact furnish any certificate of title to Davis at his request on the 14th of September, 1876?

A. I think I did.

62. X Q. Can you recollect furnishing any other certificates to Davis at any other time?

A. I remember furnishing a number of certificates. I don't

579 remember the time particularly. I can't fix the date.

63. X Q. What is there in this transaction that refreshes your memory in relation to the circumstance of furnishing such a certificate?

A. Nothing except the memorandum I have before me.

64. X Q. If you had not seen this paper purporting to be a copy of the original examination, could you have stated from anything that was in your office, that you in fact furnished Davis a certificate of title of date September 28th, 1876?

A. I think I could, upon reference to this memorandum.

65. X Q. What is there on that memorandum indicating that you did furnish such a certificate on September 28th, 1876, or that you could, in further continuance of the title from September 13, 1876?

The WITNESS. You are speaking of September 28th. I thought you were referring to September 14th. I have nothing in my possession that indicated that I furnished a certificate to anybody on the 28th September?

66. X Q. Had you anything in your office indicating that you furnished a certificate to anybody on the 14th of September, 1876?

580 A. The entry on my notes of title is, "No change in sub. 49 to September 13, 1876." That indicates to my mind that I either issued a certificate on that day or the morning following.

67. X Q. Would you issue a certificate of title in relation to a piece of property on the 14th, that your notes showed you had only examined up to the 13th?

A. Yes; I would if it was done early in the morning.

68. X Q. Do you know at what hour in the day you did furnish this certificate of September 14th, 1876?

A. No. I presume it was done early in the morning because my memorandum includes the whole of the record of September 13th, up to its close.

69. X Q. Is it not your practice and custom almost invariably to date your notes showing the time that you furnished the certificate?

A. No; it is not. It is rare that I even know the day of the examination. I generally put the month that the examination was made on my rough notes.

79. X Q. If you had no other evidence before you than your notes of title which showed that the continuance was up to the 13th of Sep-
581 tember, 1876, what would you say was the last examination that you made of the title?

A. January 14, 1875. That is the last date preceding 13th September, 1876.

71. X Q. Does not this memorandum in fact show, so far as it is concerned, that the examination of this title was continued up to 13th September, 1876?

A. Yes, sir.

72. X Q. And no further?

A. And no further.

73. X Q. Then is not that the last examination that you made in regard to this title, so far as you have any written memorandum?

A. The last I made until to-day.

74. X Q. Can you state any circumstance that refreshes your recollection that you, in fact furnished that certificate on September 28, 1876?

A. No circumstance, except that the certificates are in my language. I recognize it, it is the language that I employ, and I recognize almost every word of it as the language that I usually employ in preparing certificates, and especially the words, "and find the same good."

582 75. X Q. Can you state what hour of the day you made that examination of Sept. 28, 1876?

A. Only from the entry on the record, which is 11 a. m. on the 28th.

76. X Q. Are not the trust-deed and release mentioned in this copy recorded in the same book?

A. Yes, sir; the release precedes the deed of trust.

77. X Q. In that same book, the trust immediately follows the record of the release?

A. Yes, sir.

78. X Q. You are certain of that, are you not?

A. Yes, sir.

79. X Q. From your examination to-day?

A. Yes, sir; the release is recorded on page 18, and the deed of trust is on page 20 of the same book.

M. ASHFORD.

583 R. K. ELLIOT, having been duly sworn, testified as follows:

By Mr. MAURY:

1. Q. State your name, and whether you are one of the counsel for the defendant Williams in this case.

A. My name is Robert K. Elliot, and I am counsel for Williams.

2. Q. Were you one of the trustees in the deed of trust of 27th September, 1876 (Exhibit J. N. O., No. 2, in this case)?

A. I appear to have been, and was notified of that fiduciary relation some time in April, 1877.

3. Q. Did you ever have any conversation with Edwin J. Sweet touching the foreclosure of the deed of trust you have just referred to; if so, state particularly what conversation you had, and the particulars?

(Question objected to by Mr. Edwards.)

A. When I found upon my table, some time in April this deed of trust (Exhibit J. N. O., No. 2) containing the direction of Mr. Williams to proceed to execution by the sale of the property, I notified Mr. Sweet
584 of that order, I think, by note. Shortly thereafter he called at my office and pleaded his inability to pay the interest and urged the postponement of the sale. I did, on my own account, defer the advertisement for some weeks, but I think I sent him a second and perhaps a third notice, or spoke to him a second or third time on the subject, and he responded by calling at my office, and urged further postponement. I think the property was first advertised for sale in June, 1877. That was the advertisement that was withdrawn by direction of Davis, as I have been informed. On another occasion, preceding the 17th of July, I think, Mr. Sweet called upon me and urged a postponement, which I declined to accede to. I told him that if he could obtain the consent of Mr. Williams I had no objection. An hour or so thereafter, perhaps, he brought to me a card from Mr. Williams directing a postponement, I think either of the advertisement or the sale—I think of the advertisement; and in these conversations that I had with Sweet (which were quite extensive and quite frequent) he stated that the property was of considerable value and
585 worth $10,000; that Mr. Williams was amply secured, and left the impression upon my mind that there was nothing in the way affecting Mr. Williams' security at all. He fully recognized his liability to Mr. Williams to pay the indebtedness, and promised from time to time to pay it. I think he brought to my office B. H. Warner, who was about to lend him some money for that purpose, or brought to me at any rate a note from B. H. Warner requesting such a postponement, and was the active party all through. I saw no other party, except Davis once in a while, and Davis and Sweet seemed to be in sympathy at that time. I cannot narrate the details of these conversations, but it was very clear to me that Sweet recognized his obligation on this note, and his obligation to pay this interest.

Cross-examination by Mr. Edwards:

4. X Q. Did Charles T. Davis act with you in the matter of foreclosure of this deed of trust of September 27th, 1876?

The Witness. At what stage of the proceedings?

Mr. Edwards. In any stage of the proceedings?

586 A. Well, he was there on the day of sale, and officious, you know. I did not believe at the outset that I had a very hearty co-operator in him. (Mr. C. A. Elliot objects to the last sentence.) I forced that sale under the direction of the holder of the note.

5. X Q. Did he not perform the functions of one of the trustees under that trust in the matter of its foreclosure?

A. Oh, yes; he signed the deed, of course.

6. X Q. Did he not join with you in the execution of the deed to Blackwood, the pretended purchaser of the property?

A. Unquestionably; that is a matter of record.

7. X Q. Was he not one of the payees of the promissory note for $5,000, given by Blackwood as the balance of the purchase-money?

A. Of course; a nominal payee.

8. X Q. Did he not endorse that note with you over to Mr. Samuel T. Williams, or indorse it in blank? If not, state what was the character of the endorsement of that note.

A. I cannot recollect the endorsement. If the note was drawn to the order of Davis and Elliot, trustees, and was delivered to Williams
587 (as it was), it must have been endorsed by both the parties. I do not remember seeing Davis write his name upon it, but I have no doubt of the fact.

9. X Q. During any of the interviews that you had with Charles T. Davis in respect of the foreclosure of this trust of September 27th, 1876, was Mr. Samuel T. Williams present?

A. I do not recall a single interview prior to the foreclosure of the trust where Mr. Williams was present.

10. X Q. Was he present subsequently in any of the matters pertaining to this settlement?

A. I think that Williams was present on the day of the settlement, but he may not have been; I cannot positively recollect about that. I probably remembered about it when I testified before, but I do not remember now.

By Mr. C. A. ELLIOT:

11. X Q. Mr. Sweet was very importunate as to the postponement of the sale, was he not?

A. Oh, yes; he seemed to feel a natural anxiety to avoid it. He was importunate, if you so consider; I thought he was.

12. X Q. You postponed the sale, or the advertisement, for him, did you not?

588 A. I think the postponement to which I have referred was of the advertisement; that is my recollection now. The sale might have been postponed. I know there was considerable delay between the day of receiving Mr. Williams' order and the date of the first advertisement, and probably it was mainly in that interval that I had these interviews with Sweet.

13. X Q. If you did postpone the publication for Mr. Sweet, what induced you so to do?

A. Sweet's appeals to me and his promises to settle; and I did not see any particular reason for hurry; if he could settle within a few weeks it would be sufficient, and thus save the expense of advertising; and inasmuch as he assured me, and I really believe, the property was amply sufficient to secure the debt. I think that was the explanation I gave to Mr. Williams.

14. X Q. Charles T. Davis did nothing more to obstruct the sale of this property, did he?

A. Oh, yes; if you refer to the date of the sale.

15. X Q. I ask you in reference to anything that Davis did that obstructed the sale after the advertisements of this property?

A. I can only answer that in this way: Davis and Sweet appeared
589 in full sympathy at that time. I think Davis went with Sweet to Mr. Williams to procure the order. I know that whilst Davis did

not manifest any disposition to me to obstruct it, yet I had reason to believe that he did behind my back. That is all I can say about that.

16. X Q. The relation or sympathy between Sweet and Davis, as manifested on the part of Davis, was nothing more than a person would be actuated by any ordinary sympathy with a man whose property was about to be sold was it?

(Question objected to by Mr. Edwards.)

A. It found expression on Davis' part in apparent sympathy for Sweet by reason of his misfortune, and while it did not amount to an obstruction (excepting in so far as the withdrawl of the advertisement was concerned), yet it did not amount to a very hearty co-operation with me in the execution of the trust, as I thought at that time, and still think, but that may be matter of inference on any part.

17. X Q. Did you observe anything in the conduct of Mr. Davis that would not show ordinary sympathy by one man for another when the property of his friend was about to be sold?

590 A. I don't know anything about the ordinary sympathy of one man for another; that is all a matter of guess-work. I did observe, if you will allow me to state, that Davis was not disposed to cooperate with me in the execution of the trust, wherein he was trustee; whether that resulted from a sympathy for Sweet, or something else, I do not know.

18. X Q. You were not very anxious to sell this property yourself, were you?

A. I was, after Mr. Sweet failed to come up to his agreement to pay the interest as he had promised me.

19. X Q. You would not have advertised it, or sold it, had it not been for the positive order of the beneficiaries, would you?

A. I would not have had any right to.

By Mr. EDWARDS:

20. X Q. That was a joint order to sell, was it not?

A. That order is on the back of Exhibit J. N. O., No. 1. It was an order addressed to the trustees, and was a single order on both trustees.

21. X Q. From time to time did not Davis call upon you with Sweet, or alone, and endeavor to obtain a postponement of this sale, or of the advertisement?

591 A. I believe that Mr. Davis, not in company with Sweet, did suggest a postponement; how often he did so, I do not know.

22. X Q. Do you recollect the reasons that he gave therefor, or the suggestions, if any, that he made in relation to the matter?

A. I think he stated that it was reasonably certain that Sweet would be able to pay the interest, and inasmuch as the sale was ordered for default in payment of interest it would incur an expense for a comparatively trifling debt.

23. X Q. After the sale of this property, and your distribution of the proceeds of the sale, how much did you pay Samuel T. Williams as interest due at the time of sale on the note for $5,000 made by Addie M. Sweet?

A. From my rough memorandum, which is all the data I have, it appears that I paid $337.50 interest upon that note.

24. X Q. In the settlement of the foreclosure of this sale was there not

an agreement entered into between yourself and co-trustees, Charles T. Davis and Samuel T. Williams, in respect to certain taxes, and was not that agreement in writing?

A. Yes, sir.

25. X Q. Have you that paper with you?

592 A. Yes, and it is as follows: "Out of the $110.89 which the trustees claimed credit in the sale of sub-lot 49 of Augustus Davis' sub-division of square 573, $52.50 was, by consent of all parties, applied to the payment of the cost of advertising said property after default in complying with the terms of sale of July 17, 1877, leaving $58.29 in the hands of Samuel T. Williams, the party secured, to be applied to the taxes of 1877. A deficiency of $52.50 which is chargeable to the property and secured by the trust from Blackwood to Davis and Ashford bearing date July 17, 1877.

(Signed) "CHARLES T. DAVIS,
"R. K. ELLIOT,
"SAMUEL T. WILLIAMS,
"*Trustees.*"

26. X Q. In whose handwriting are the signatures to that paper?

A. They are the proper signatures of the parties whose names are there.

27. X Q. Where was that signed?

A. In my office.

28. X Q. Were all the parties present?

A. They were. They may have signed at different times, but
593 my impression is that they were all present at the same time. The body of that paper is in my handwriting.

R. K. ELLIOT.

Adjourned to 1 o'clock p. m., Saturday April 27.

WASHINGTON, D. C., *April 27th*, 1878.

Met pursuant to adjournment. Present, Mr. Edwards, for the complainant; Mr. R. K. Elliot, for the defendant Williams, and Mr. Callaghan, for the defendant Sweet.

Cross-examination of SAMUEL T. WILLIAMS resumed, by Mr. EDWARDS:

266. X Q. You were requested at the last session to produce the policy of insurance mentioned in your deposition; have you found that policy?

A. I have not. I have searched in an envelope where I kept all my papers in reference to the Sweet loan, but I have not found it, and
594 I am now strongly under the impression that at the time of the sale of July, 1877, the policy was handed to the trustees and by them handed to the purchaser under the sale; the policy had not expired; it would have expired on the 28th of September; whereas the sale took place in July. So that unquestionably the policy must have been transferred; and that is probably the case. The policy must have been transferred to the purchaser at this sale.

267. X Q. Who was the purchaser at this sale?

A. Mr. Blackwood, I believe. He was the nominal purchaser.

268. X Q. Did you see this policy of insurance delivered to Mr. Blackwood?

A. I did not.

269. X Q. To whom was it delivered, according to the best of your recollection?

A. To the best of my recollection, I think it was delivered to the trustees, Mr. R. K. Elliot and Mr. Charles T. Davis, at the time of the settlement of the accounts.

270. X Q. Was Mr. Davis present in Mr. Elliot's office at the time you delivered that policy of insurance to the trustees?

A. If I delivered it to them (as it is my impression that I did) he was present.

595 271. X Q. Your recollection is, then, that the policy of insurance was delivered up to the trustees at the time you delivered up the original five thousand dollar note of September, 1876?

A. That is my impression. I do not know positively in reference to the disposition of this policy; but it is my impression, and I draw the conclusion from all the circumstances, that I did so deliver it.

272. X Q. How was the note of July, 1877, for five thousand dollars, given by Mr. Blackwood as the deferred payment of purchase of the property, and sold by Messrs. Davis and Elliot, trustees, endorsed?

A. I cannot recollect positively; but I will produce a copy of the note. (See copy of note referred to in the last answer, marked Exhibit S. T. W., A, and hereunto attached.)

Mr. ASHFORD recalled and further examined by Mr. R. K. ELLIOT:

80. Q. State whether since your last examination in this case you
596 have seen the original certificate prepared by yourself in respect of the title of sub-lot 49, in square 513.

A. I have.

81. Q. Have you that certificate in your possession at this time?

A. I have (producing the same).

82. Q. From whom did you obtain it; and when did you obtain it?

A. It was handed to me by Mr. Charles T. Davis this morning, at the record office.

83. Q. Do you identify it as the original, and is it in your own handwriting?

A. The body of the certificate and the signature are in my handwriting.

84. Q. Will you please read that certificate?

(The witness reads the certificate marked S. T. W., B, as requested.)

85. Q. Please hold the paper purporting to be a copy of this certificate, annexed to the answer of the defendant Williams, while I read the original, which has just been read by you, and after the reading state whether that is a true copy.

(The copy and the original having been read and compared.)

A. It is a correct copy, except that the lot and square is given
597 at the top of the page in the copy, and the date of the record is given as January 4th, instead of January 14th, in the record of the deed of trust noted in the first certificate of September 14th, 1876. It is a correct copy with those exceptions.

86. Q. They do not appear in the original?

A. No, sir; they do not appear in the original.

Mr. ELLIOT. I now offer in evidence the original certificate, compared by Mr. Ashford, and dated respectively September 14th, 1876, and September 28th, 1876, and identified by him, and the same are here filed and marked Exhibit S. T. W., B.:

"I have examined the title to lot 40 of A. Davis' sub. of original lot 8, in square 513, and find the same good in Addie M. Sweet, subject to a deed of trust to Charles T. Davis and Wm. Stickney, dated Jan. 1, 1875; recorded Jan. 14, 1874, lib. 776, fol. 48, to secure Augustus Davis $8,000 and interest at 8%, which is the only lien or encumbrance, except taxes for 1875–6.

"M. ASHFORD,

"Sept. 14, 1876.

Since the above, the only change is 1876, Sept. 28—release of
598 trust above noted; 1876, Sept. 28, deed trust to Chas. T. Davis and Rob't K. Elliott, dated Sept. 27, '76. Secure Sam'l T. Williams, $5,000, 4 years, int. 9% semi-annually.

"M. ASHFORD.

"SEPT. 28, '76."

(Exhibit S. T. W., B.)

Cross-examination by Mr. EDWARDS:

87. X Q. Does this original certificate of title show that on date of September 28th, 1876, the property therein described was entirely free from all encumbrances of any description?

A. My answer to that is, that the certificate will speak for itself.

88. X Q. Are there not certain taxes mentioned in that certificate under date of September 14th, 1876, as unpaid?

A. Yes, sir.

89. X Q. Is there anything in that certificate to indicate that
599 at the time you dated the additional certificates, those taxes had been paid?

A. No, sir.

90. X Q. What is the character of the taxes mentioned under date of the certificate of September 14th, 1876?

A. General taxes.

91. X Q. The paper marked Exhibit S. T. W., B., shows that you made two separate certificates in relation to this title. When you wrote that under date of September 28th, 1876, had the release and the trust therein mentioned been in fact recorded in any book in the office of the recorder of deeds?

A. I presume not.

92. X Q. Did you not write this certificate of September 28th, 1876, at the time they were left with the recorder for record?

A. Yes, sir.

93. X Q. Have you any recollection of ever seeing the two papers therein mentioned in any book in the recorder of deeds' office until the day you last testified in this case?

600 A. No, I never did. I never saw the deeds, either the originals or the record of them, until the day I was last examined, when I last examined the record of the deeds, since having seen them on the 28th of September, as I before stated.

94. X Q. Have you in fact seen the originals of the two deeds described in this certificate of September 28th, 1876, since the date that you made that certificate?

A. Not to my recollection.

95. X Q. Is the paper which you state, is an original furnished by you and marked Exhibit S. T. W., B, in the identical condition that it was when you received it from Charles T. Davis to-day?

A. I do not know. It was delivered by me in the same condition that I received it.

96. X Q. After receiving it from Mr. Davis what did you do with it?

601 A. I put it in my pocket and kept it until about an hour ago when I handed it to Mr. Charles A. Elliot on my way from the record office.

97. X Q. Was the paper, when you delivered it to Mr. Charles A. Elliot, in the precise condition that it was when you received it from Mr. Davis?

A. It was.

98. X Q. Do you recognize the lead-pencil figures at the bottom of your certificate of September 28th, 1876?

A. No, sir; I do not know who put them there.

99. X Q. Were they there when you received them?

A. That I cannot say. I was busy at the record office at the time, and Mr. Charles T. Davis called and handed me this paper, stating that Mr. Elliot had requested him to give it to me. I do not know which of the Mr. Elliots it was. I opened it and looked at it casually, folded it up and put it in my pocket, and never touched it again, that I know of, until I handed it to Mr. Charles A. Elliot.

100. X Q. Did you write anything, either in lead-pencil or with a pen, on that paper during the time that you have had it to-day?

A. No, sir; not a word.

602 101. X Q. Examine the lead-pencil memorandum on the outside of this certificate, in the left hand upper corner, being the words "fee, $10," and state in whose handwriting that is?

A. I do not know.

102. X Q. Is it not in your handwriting?

A. No, sir.

103. X Q. You are positive of that?

A. I am positive of that; that it is not my handwriting.

104. X Q. Do you know in whose handwriting the lead-pencil memorandum, "M st. 439," on this paper, immediately under your certificate of September 28th, 1876, is?

A. I do not; it is not mine.

105. X Q. Do you know anything about it?

A. I do not.

106. X Q. Does not that lead-pencil memorandum appear as if an attempt had been made to erase it?

A. Yes, sir; evidently.

107. X Q. Do you recollect who paid you for that certificate?

A. I do not.

603 108. X Q. Do you recollect to whom you delivered this paper at the time of your first certificate of September 14th, 1876?

A. My recollection is that I delivered it to Mr. Charles T. Davis.

109. X Q. When you furnished the additional certificate of September 28th, 1876, do you recollect to whom you delivered it?

(Question objected to by Mr. R. K. Elliot, as having been already answered.)

A. My recollection is, that I delivered it to the same person that I did the first—Mr. Charles T. Davis.

110. X Q. From the time that you delivered that paper, after the certificate of September 28th, 1876, have you ever seen it until to-day, to your recollection?

A. No, sir; not to my recollection.

111. X Q. Did you ever have any consultation with Charles T. Davis in relation to it?

A. No, sir; not to my knowledge.

112. X Q. What time to-day did he hand you that paper?

A. It was between 11 and 12 o'clock.

604 By Mr. CALLAGHAN:

113. X Q. Did anybody other Charles T. Davis approach you about furnishing this certificate of title known here as Exhibit S. T. W., B?

A. Not to my recollection.

Redirect examination by Mr. R. K. ELLIOT:

114. Q. You have been asked on cross-examination about the recording of these papers. What do you understand by the term record?

(Question objected to by Mr. Edwards.)

A. The delivery of the papers to be recorded.

115. Q. When you delivered that certificate those papers were in the recorder's office, were they not?

A. Yes, sir, they were; delivered for record.

116. Q. Are not deeds and other papers left in that office for
605 record entered upon a book as received, in the order of their reception?

A. No, sir.

117. Q. Are they not indexed upon a book in the order of their reception?

A. No, sir.

118. Q. What evidence have you that a paper is left for record before it is actually recorded in detail upon the books?

A. When it is delivered to the deputy he gives a receipt for every deed as soon as it is delivered.

119. Q. What evidence would you have that the receipt had been given?

A. I would generally see the receipt handed to the parties before I delivered the certificate. Every deed is numbered as soon as it is delivered. And, in addition to the *receipt*, [*deed] the recorder endorses upon the back of the receipt, "Received for record," giving the date.

*In pencil in original.

120. Q. Then upon what information did you prepare the last certificate upon Exhibit S. T. W., B?

606 (Question objected to by Mr. Edwards, as having been already answered.)

A. Seeing the release and the trust delivered to the recorder for record was the evidence upon which I prepared this certificate of September 28th, 1876.

121. Q. Is there anything upon this paper (Exhibit S. T. W., B) rendering it in any manner different from the condition in which it was when you delivered it to Charles T. Davis, or to somebody for him, as affecting the title to which you certified?

A. No, sir; nothing.

Recross-examination by Mr. EDWARDS:

122. X Q. When you furnished this certificate of September 28th, 1876, was the lead-pencil memorandum "M st., 439" thereon, to your knowledge?

A. I do not know.

123. X Q. Was not this release and trust, mentioned in your cer-

607 tificate of September 28th, 1876, delivered to the recorder for record simultaneously?

A. I believe it was, to the best of my recollection.

124. X Q. Please describe, from your knowledge of the recorder of deeds' office whether in fact there is any entry made in any book of deeds "received for record" on the day that they are left there?

(Question objected to Mr. R. K. Elliott out of consideration for Mr. Wolf, the recorder of deeds.)

A. There is not to my knowledge.

M. ASHFORD.

Mr. R. K. ELLIOT, being recalled, testified as follows:

Since the last session of this commission I requested Mr. Charles A. Elliot, the counsel of C. T. Davis, to notify him to produce the original certificate of title, Exhibit S. T. W., B. Mr. Charles T. Davis

608 called at my office this morning, and I demanded of him that he deliver that paper to Mr. Ashford forthwith. During the session of this commission, and prior to the arrival of Mr. Ashford, this exhibit was handed to me by my clerk in the same condition in which it now appears, excepting the lead-pencil mark "S. T. W., B," which I saw Mr. Ashford place upon it a moment ago for identification.

R. K. ELLIOT,
Per STENOGRAPHER.

Adjourned till Wednesday, May first, 1878, at one o'clock p. m.

MAY 2, 1878.

The examiner notes that the meeting of yesterday was passed by consent of parties, and Mr. R. K. Elliot, counsel for defendant Williams, notifies the examiner that the testimony-in-chief for defendant Williams is closed.

A. JOHNS, *Examiner*.

609 *Final decree.—Filed November* 16, 1878.

In the supreme court of the District of Columbia.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

This cause coming on to be heard upon the pleadings, exhibits, evidence, and the decree pro confesso against the defendants Eli S. Blackwood and Addie M. Sweet, and having been heard, argued by counsel, submitted to, and considered by the court, it is, this 16th day of November, 1878, ordered, adjudged, and decreed that the said decree pro confesso against the defendants Eli S. Blackwood and Addie M. Sweet, be, and the same is hereby, made absolute; and the prayer of the bill, so far as the same prays that the deed of release from the defendants Charles T. Davis and William Stickney, trustees, to the defendant Addie M. Sweet, as described in the bill, be set aside and declared void as to complainants, and the deed of trust of January 1, 1875, to secure complainants, be reinstated and decreed to have priority over the deed of trust to secure the defendant Samuel T. Williams, be, and the same is hereby, refused and denied.

It appearing to the court, however, that there is due to the complainants upon the three promissory notes held by them and particularly described in the bill, the sum of six thousand one hundred and sixty-six dollars and sixty-six cents ($6,166.66), with interest thereon at the rate of eight (8) per cent. per annum from the 1st day of July, 1876, until paid; and that the said deed of trust of January 1, 1875, securing the said indebtedness so due the complainants and represented by the said promissory notes, was wrongfully, unlawfully, negligently, and fraudulently released and caused to be released by the defendants Augustus Davis and Charles T. Davis, and was wrongfully and negligently released by the defendant William Stickney, to the great prejudice and injury of the complainants' rights in the premises, it is therefore further ordered, adjudged, and decreed that the complainants recover of and from the defendants Augustus Davis, Charles T. Davis, William Stickney, Edwin J. Sweet, and Addie M. Sweet the said sum of six thousand one hundred and sixty-six dollars and sixty-six cents ($6,166.66), with interest thereon at the rate of eight (8) per cent. per annum from the first day of July, 1876, until paid, and $, costs of this suit to be taxed by the clerk, and that they have execution thereof as at law.

And it appearing to the court further that the defendant Samuel T. Williams is the holder and owner of the promissory note described in his answer for the sum of five thousand dollars ($5,000), with in-
610 terest thereon at the rate of nine (9) per cent. per annum from the 17th day of July, 1877, until paid, payable semi-annually; and that the same is secured by the deed of trust described in the proceedings of even date therewith; and the same is at law and in equity the first lien and incumbrance upon the said property therein described; and that by reason of default in the payment of two installments of interest due on said note the said property is liable and subject to sale for the payment

of the said interest and the principal of the said note; and that the indebtedness so as aforesaid found to be due to the complainants is and ought to be decreed in equity and good conscience to be the next and second incumbrance upon the said property as against all the parties defendant herein, it is therefore further ordered, adjudged, and decreed that the said property, to wit, lot numbered forty-nine (49) of Augustus Davis' subdivision of original lot numbered eight (8), in square numbered five hundred and thirteen (513), in the city of Washington and District of Columbia, be sold by the trustees hereinafter appointed, for the payment of the said incumbrances so as aforesaid found in the order named; that Mahlon Ashford and Job Barnard be, and they are hereby, appointed trustees to make such sale; that before proceeding to execute this trust they shall each give bond to the United States in the penalty of ten thousand dollars, with sureties to be approved by this court, or one of the justices thereof, conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any further order or decree in the premises.

That the said trustees shall thereafter advertise the said property for sale by giving notice of the time, place, and terms thereof, by consecutive tri-weekly publications of such advertisement in one or more of the daily newspapers printed and published in said city and District, the first of which shall be at least ten (10) judicial days before the day of sale; that such sale be made at public auction, to the highest bidder, in front of the premises, and upon the following terms: One-fourth of the purchase-money in cash, and the residue in six, twelve, and eighteen months from the day of sale, the purchaser giving his three promissory notes, each for one-fourth of the whole purchase-money, for such deferred payments, with interest at six per cent. thereon from the day of sale, or all cash, at the option of the purchaser, the said trustees to retain the title to the said property, which is hereby decreed to be in them for the purposes of this sale, until the whole purchase-money shall be paid; and if any purchaser shall fail to comply with the terms of any such sale, the trustees shall have power to readvertise and resell the said property at the risk and cost of such defaulting purchaser, and after making sale of said property the said trustees shall report the same under oath to this court, and after such sale shall have been finally ratified and confirmed by the court, and the purchase-money therefor fully paid, the said trustees shall execute and deliver a deed of conveyance of said property to such purchaser, his heirs,
611 or assigns, conveying thereby all the right, title, and estate and interest of the said parties to this suit, and each and all of them, in and to the said property, free, clear, and discharged of and from all claims, encumbrances, and liens of the said parties to this suit, and each and all of them, and of all persons claiming under them, or any of them.

And the said trustees are authorized to sell the said property free of taxes, if any assessed thereon shall be unpaid at the day of sale, and to pay the same from the proceeds of such sale.

And, further, that upon a statement of the receiver's account herein, if any moneys shall remain in his hands, that the same be applied in the same manner and order, as the proceeds of such sale of said property, to-

ward the payment of the encumbrances so as aforesaid found and decreed; and all surplus of such proceeds of sale and moneys in the hands of receiver, after payment of the said sum to the said defendant Samuel T. Williams, and the costs, expenses, and taxes properly payable therefrom, shall be paid to complainants, and be credited on the personal decree so as aforesaid found and decreed in favor of said complainants.

By the court.

MACARTHUR, *Justice.*

Appeal by defendant Wm. Stickney.—Filed November 16, 1878.

Supreme court District of Columbia.

JACKSON ET AL. *v.* BLACKWOOD ET AL. } 5950. Eq.

The defendant Wm. Stickney hereby appeals from so much of the decree passed at special term on this 16th day of November, 1878, as adjudges and decrees that the complainants recover of and from said Stickney the sum of six thousand one hundred and sixty-six $\frac{66}{100}$ dollars and interest and costs, and have execution therefor at law.

The amount or penalty of said bond to be the sum of $10,000.

By the court.

MACARTHUR, *Justice.*

Appeal bond of Wm. Stickney, (No. 1.)—Filed Nov. 22, 1878.

In the supreme court of the District of Columbia.

B. L. JACKSON ET AL. *vs.* E. S. BLACKWOOD, WILLIAM STICKNEY, ET AL. } In equity. No. 5950.

Know all men by these presents that we, William Stickney and
612 F. H. Stickney, are held and firmly bound unto Benjamin L. Jackson, William B. Jackson, and George J. Seufferle, in the just and full sum of $10,000, to be paid to the said B. L. Jackson, W. B. Jackson, and G. J. Seufferle, to their certain attorneys, executors, administrators, and assigns, to which payment well and truly to be paid we bind ourselves, executors, and administrators firmly by these presents. Sealed with our seals and dated this twenty-first day of November, A. D. 1878.

Whereas the defendant William Stickney has appealed from a decree rendered against him in this cause:

Now, therefore, the condition of the above obligation is such, that if the above-bound Stickney shall prosecute the said appeal with effect, and also satisfy and pay the said judgment if affirmed, as also all costs and damages that shall be awarded by the court, then this bond shall be void; it shall otherwise remain in full force and virtue at law.

WM. STICKNEY. [SEAL.]
F. H. STICKNEY. [SEAL.]

Signed, sealed, and delivered in presence of—
THOMAS R. JONES.

Approved Nov. 22, 1878.

MACARTHUR, *Justice,*

Appeal bond of Wm. Stickney, (No. 2.)—Filed November 30, 1878.

In the supreme court of the District of Columbia, the day of , 18 .

B. L. JACKSON ET AL., PLAINTIFFS,
vs.
ELI S. BLACKWOOD ET AL., DEFENDANTS. } No. 5950.

The defendant Stickney, having appealed to the general term from the decree pronounced herein on the 16th of November, 1878, in the equity court, and F. H. Stickney, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

WM. STICKNEY, *Appellant.*
F. H. STICKNEY, *Surety.*

Witness—
T. R. JONES.

Appeal by defendants Chas. T. and Augustus Davis.—Filed November 19, 1878.

JACKSON, BRO. & CO.
vs.
BLACKWOOD ET AL. } 5950. Equity.

The clerk will please enter an appeal to general term from so
613 much of the decree passed in this cause on the 16th instant as affects the rights of the defendants Augustus and Chas. T. Davis.

CHAS. A. ELLIOT, *Solicitor, &c.*

Appeal by complainants.—Filed November 27, 1878.

BENJ'N L. JACKSON ET AL.
vs.
ELI S. BLACKBURN ET AL. } 5950. Equity.

The complainants hereby appeal from so much of the final decree entered herein on the 16th day of November, 1878, as denies to them the relief prayed, and as refuses to set aside the deed of release mentioned in their bill, and to reinstate their deed of trust and give the same priority over the trust to secure defendant Williams, and as refuses to pay complainants' debt from proceeds of sale of property described after costs and expenses, and before payment of debt due to defendant Williams.

EDWARDS & BARNARD,
Solicitors for Complainants.

Appeal bond of complainants.—Filed December 4, 1878.

In the supreme court of the District of Columbia, the day of November, 1878.

BENJAMIN L. JACKSON ET AL., PLAINTIFFS,
vs.
ELI S. BLACKWOOD ET AL., DEFENDANTS. } No. 5950.

The complainant, having appealed to the general term from part of the final decree pronounced herein on the 16th of November, 1878, in the equity court, and William L. Seufferle, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

W. B. JACKSON,
GEO. J. SEUFFERLE,
Surviving members of firm of Jackson Bro. & Co., Appellants.
WM. L. SEUFFERLE, *Surety.*

This bond is satisfactory. Nov. 29, 1878.
MAURY & ELLIOT,
For Williams.

Approved Dec. 3, 1878.
MACARTHUR, *Justice.*

614 *Decree in gen. term, Dec.* 1, 1879.

In the supreme court of the District of Columbia, in general term.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD ET AL. } No. 5950. Equity.

This cause coming on for hearing upon the appeal of the complainants and of the defendants William Stickney, Augustus Davis, and Charles T. Davis, and being heard, argued by counsel, submitted, and considered, it is, this first day of December, 1879, ordered, adjudged, and decreed:

1. That so much of the decree of the court in special term, passed November 16, 1878, as denies the relief asked in the second prayer of the bill, and finds, orders, or provides that the defendant Samuel T. Williams is entitled to, and has priority of lien over, that of the complainants, and is to be first paid from the proceeds of sale of the said property, and from any surplus in the hands of the receiver herein the said amount found due him, be, and the same is hereby, reversed.

2. That so much of the said decree as adjudges that complainants recover of and from the defendant William Stickney the sum so
615 found to be due them, and have execution thereof as at law, be, and the same is hereby, reversed.

3. That the remainder of the said decree be, and the same is hereby, affirmed.

4. That the said decree so affirmed be, and the same is hereby, modified and supplemented, as follows:

That out of the proceeds of such sale, and from any surplus remaining in the hands of the receiver, there shall be paid, after deducting proper costs, taxes, and expenses:

First. The sum so found due to the complainants and secured by the said deed of trust of January 1, 1875, which is hereby decreed to be the first encumbrance upon said property.

Second. The sum so found due to the defendant Samuel T. Williams, and secured by the said deed of trust of September 27, 1876, which is hereby decreed to be the second encumbrance upon the said property.

Third. The residue, if any, to the defendant Addie M. Sweet.

5. And from so much of this decree as reverses the decree of the special term against the defendant William Stickney the complainants
616 pray an appeal to the Supreme Court of the United States, which is allowed, and the penalty of the bond is fixed at $500.

6. And from so much of this decree as gives priority to the lien of complainants, and provides the payment of the sum found due them before the payment of the sum found due the defendant Samuel T. Williams, the said defendant Samuel T. Williams prays an appeal to the Supreme Court of the United States, which is allowed, and the penalty of the bond fixed at $500.

By order of the court.

D. K. CARTTER,
Chief Justice.

617 In the supreme court of the District of Columbia, the 15 day of Dec'r, 1879.

BENJAMIN L. JACKSON, WM. B. JACKSON, & George J. Seufferle, firm of Jackson, Bro. & Co.,
vs.
ELI S. BLACKWOOD ET AL. } No. 5950.

Know all men by these presents that we, Samuel T. Williams and Franklin Rives, are bound unto the above-named complainants in the sum of five hundred dollars, to be paid to the said complainants, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 15 day of Dec'r, 1879.

Whereas the above-named Samuel T. Williams has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia, Dec. 1, 1879:

Now, therefore, the condition of this obligation is, that if the above-named Samuel T. Williams shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then

this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAM'L T. WILLIAMS. [SEAL.]
FRANKLIN RIVES. [SEAL.]

Sealed and delivered in presence of—
R. J. MEIGS, JR.
JAS. CRASSON.

Approved Dec. 15, '79.

A. B. HAGNER.

618 In the supreme court of the District of Columbia, the 17th day of December, 1879.

BENJAMIN L. JACKSON ET AL.
vs.
ELI S. BLACKWOOD, WILLIAM STICKNEY, et al.
No. 5950. Equity. In error.

Know all men by these presents that we, William B. Jackson, George J. Seufferle, and A. Middleton, are bound unto the above-named William Stickney, one said defendants, in the sum of five hundred dollars, to be paid to the said William Stickney, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of December, 1879.

Whereas the above-named complainants, Benjamin L. Jackson, William B. Jackson, & George J. Seufferle, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia, so far as the same relates to the said defendant William Stickney:

Now, therefore, the condition of this obligation is, that if the above-named complainants and appellants shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

W. B. JACKSON. [SEAL.]
GEO. J. SEUFFERLE. [SEAL.]
A. MIDDLETON. [SEAL.]

Sealed and delivered in presence of—
C. T. BROWNING.

Approved.

A. WYLIE,
Justice, &c.

619 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writ-

ings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 9th day of February, 1880.

[SEAL.] R. J. MEIGS, *Clerk.*

By

Assistant Clerk.

(Indorsement on cover:) No. 209. Samuel T. Williams, appellant, vs. Benjamin L. Jackson, William B. Jackson, & George J. Seufferle, as Jackson, Brother & Co. Filed 9th April, 1880. No. 482. Cross appeal. Benjamin L. Jackson, William B. Jackson, and George J. Seufferle, as Jackson Brothers & Company, appellants, vs. William Stickney. Filed 4th February, 1881. District of Columbia sup. court.

OFFICE SUPREME COURT U.S.
FILED
17-478
JAMES H. McKENNEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL T. WILLIAMS
vs.
JACKSON ET AL.

No. 209.

P. PHILLIPS AND
W. HALLETT PHILLIPS,
Of Counsel for Appellant.

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL T. WILLIAMS
vs.
JACKSON ET AL. } *No. 209.*

Brief of P. Phillips and W. Hallett Phillips of Counsel for Appellant.

On 1 January, 1875, Mrs. Sweet and husband executed a deed to Charles T. Davis and William Stickney, by which they "bargained, sold, alienated, enfeoffed, released and conveyed" a certain lot designated as No. 49 in the city of Washington.

This deed was made to secure three notes, payable to Augustus Davis. Upon full payment thereof, with interest, costs, &c., the said Davis and Stickney were "to release and convey to Mrs. Sweet, her heirs, and assigns."

The deed further provided that in default of payment the said Davis and Stickney were to sell the lot at public auction, and convey the same in fee simple to the purchaser.

This deed was duly acknowledged and recorded, *14 January, 1875.*

On 15 September, 1876, a deed was executed reconveying this lot to Mrs. Sweet, and reciting that the "indebtedness and all interest, cost, and expenses," as described in the former deed, "had been fully paid and discharged, as is ev-

idenced by the signature hereto of Augustus Davis, the holder of the note for said indebtedness."

This conveyance is signed—

CHARLES T. DAVIS, *Trustee*,
WILLIAM STICKNEY, *Trustee*,
AUGUSTUS DAVIS, *Party Secured.*

Acknowledged before notary 15 September, 1876, and recorded *28 September, 1876.*

On *27 September, 1876*, Mrs. Sweet and husband conveyed this property to Charles T. Davis and Robert Elliot to secure the payment of a promissory note to Samuel T. Williams, "bearing even date herewith, payable four years after date, for the sum of $5000, interest payable semi-annually.

This was recorded 28 September, 1876.

Default having been made in the interest payment, on request of Williams the property was sold and purchased by Eli S. Blackwood, 7 July, 1877, for the sum of $6325. A deed was executed to him *27 July*, 1877.

Recorded 23 August, 1877.

On 17 July, 1877, Blackwood conveys the property to Ashford and Davis to secure the payment of the note given by him to Davis and Elliot, trustees, for $5000, deferred payment on the purchase made by him.

This note of Blackwood represents the note to Williams, which was secured by the deed from Mrs. Sweet and husband to Davis and Elliot of 27 September, 1876.

In this state of the title, Jackson Brother & Co., on 22 November, 1877, filed their bill in the Circuit Court for the District of Columbia, claiming to be *bona fide* holders of the notes, under the deed first mentioned, by virtue of the indorsement to them by Augustus Davis, the payee.

It avers that the note of Blackwood was delivered to Williams in payment of the note for same amount secured by the deed to Elliot and Charles T. Davis, and that Williams claims the same, together with the deed given by Blackwood to secure it as constituting a lien or encumbrance on the property, having priority over the trust from Sweet and wife to Stickney and Charles T. Davis to secure complainant's said notes.

It is further averred that the release executed was fraudulent; and that at the time Williams took the note for $5000, dated 27 September, '76, the pretended release was not recorded; and that its execution, under the circumstances, is not sufficient to deprive the complainant of their security, the said Williams having notice of their said lien.

The bill prays that the release be declared void and of no effect, and that the sale to Blackwood may be vacated and set aside.

Williams, in his answer, denies that at the time he took the note for $5000, the release was not recorded. He avers that he made the loan in good faith, on 28 September, '76 (and not, as suggested in the bill, on the previous day), in full reliance on an abstract of title to the lot No. 49, signed by M. Ashford, and dated 28 September, '76.

That this abstract showed, to the satisfaction of the defendant, that the release, executed 19 September, was recorded 28 September, '76, prior to his receipt of the note for $5000, and prior to the payment of the $5000 loaned thereon by the defendant, secured by the deed of trust to Elliot and Davis.

That he relies on said deed as a full and legal security for the payment of the sum loaned by him in entire good faith and without knowledge of any fact which ought or might vitiate said security.

In his amended answer (p. 28), he sets forth the deed to Davis and Elliot, and the purchase by Blackwood for $6325. By the terms of sale made under it, the original sum of $5000 was allowed to remain secured on the property. To that end, Blackwood executed his note therefor, payable to the trustees, which they indorsed without recourse, and delivered the same to this defendant, together with the deed of trust to Davis and Ashford, securing the note, which stands in the place of the note secured by Mrs. Sweet.

This presents the controversy as between the complainants in the bill and Williams, the present appellant.

Stickney, the trustee, answers that he required satisfactory evidence of the payment of the notes secured by the deed, before he executed the deed of release; that he is unable, at this date, to state in what form such evidence was produced—but at the time, he was well satisfied of the payment of the debt; and that it was his duty to execute the release, and accordingly executed it in good faith.

Charles T. and Augustus Davis deny that the release was not recorded until after the deed of trust to secure Williams was executed. They also deny that Williams had, through them, or either of them, any notice of the claim of complainant's. (p. 31.)

On the hearing a decree was rendered asserting Williams' priority over the complainant's, and appointing trustees to sell the premises for the payment of what was found due to him.

It was further adjudged that the complainants recover of Augustus Davis, Charles T. Davis, Williams, Stickney the amount due on the notes held by them.

On appeal to the Court in General Term by Jackson

Brothers & Co., and by Stickney, the decree of the Circuit Court declaring that Williams was entitled to and has a priority lien over that of the complainants, and is to be first paid out of the proceeds of sale, was reversed.

So much of the decree as adjudges that complainants recover from defendant, Stickney, the sum found to be due to them, was also reversed.

Jackson Brothers & Co. now appeal from so much of this decree as relates to Stickney.

Williams prosecutes his separate appeal, and ASSIGNS FOR ERROR, the decree asserting the right of complainants to priority of payment out of the proceeds of the sale of the property. The decree should have affirmed the decree of the Equity Court declaring the priority of Williams.

Argument.

The deed to Davis and Stickney of 1 Jan'y, '75, vested them with the legal title to the premises in controversy, though defeasible.

The distinction between a mere grant of power and the grant of an estate is obvious. When the estate is granted, coupled with a power, then it is as though it belonged to the grantee.

His conveyance, *at law*, is binding and effectual, whether he conforms to the limitations imposed upon the exercise of that power or not.

It is in vain to say that the trustees ought not, according to the trusts on which they took the legal title, to have conveyed the same.

Taylor vs. *King*, 6 Mumf., 355;

Conroy vs. *Troutman*. 7 Iredell, 158;
Beattie vs. *Butler*, 21 Mo., 350.

Nothing can be clearer than that a purchaser for valuable consideration, without notice of a prior equitable title, obtaining the legal estate at the time of his purchase, is entitled to priority in equity as well as at law, according to the well-known maxim, *where equities are equal, the law shall prevail.*

Equity will not disarm a purchaser, but assist him. Precedents are numerous where the Court refused to give any assistance against a purchaser, either to an heir, or to a widow, or to the fatherless, or to creditors, or even to one purchaser against another. (2 W. & T. Cases in Eq., p. 7.)

In *Boone* vs. *Chiles*, the Court, referring to the principle that, where the equities are equal, in point of merit, the law prevails, thus proceeds:

> "This leads to the reason for protecting an innocent purchaser, holding the legal title, against one who has the prior equity. A court of equity can act only on the conscience of a party. If he has done nothing that taints it, no demand can attach upon it so as to give any jurisdiction. Strong as a plaintiff's equity may be, it can in no case be stronger than that of a purchaser, who has put himself in peril by purchasing a title, and paying a valuable consideration, without notice of any defect in it, or adverse claim to it. And when, in addition, he shows a legal title from one seized and possessed of the property purchased, he has a right to demand protection and relief, which a court of equity imparts liberally. Such suitors are its most especial favorites." (10 Pet., 210.)

These principles of law are sustained by the unanimous opinion of the court below.

It is therein said: "We are met at the outset with the objection that the trustees possess only what is called a *power*, and that his release is inoperative to pass any

estate unless made on the particular state of facts mentioned in the deed of trust, namely, when the debt is actually paid." This we conceive is a misconception. He has the legal estate and can transfer it at law, even if in so doing he violates his duty. What is called a power is a mere limitation of the legal power which he already has by reason of his estate. If it were otherwise it would always be necessary in making out a legal title through his conveyance, to prove not only his deed but the facts *in pais*.

By the release in the case at bar, the legal title passed to Mrs. Sweet, and by the second deed of trust it passed from her to Davis & Elliot. This is the effect which a *court of law* would be bound to give to these conveyances.

The court, proceeding to consider how a court of equity "must treat the title in the hands that now hold it," say:

> "If it should appear that the equity of the *cestui que trust* under the second deed was equal to that of the *cestui que trust* under the deed which had been released; in other words, that Williams purchased not only without actual knowledge of the fraud in the release, but without any duty to enquire into the propriety of the release, then the predicament of the legal title would be conclusive. It is not necessary that the legal title should be in the same hands with one of the equities. If a legal title has to be broken down in order to give preference to one of two equal equities, it is immaterial whether it is in the hands of a trustee, for the protection of one of the parties, or in those of the party himself."

Having announced these principles, which we submit need no argument to sustain them, the opinion proceeds to hold Williams, though not alleged to have had actual knowledge of the breach of trust, to be chargeable with constructive notice, and this upon the sole ground, that the deed, 1 January, 1875, showed that some of the notes secured thereby, were according, to their tenor, not due when the release was executed.

On this point the Chief Justice dissented, and in all other matters concurred.

The controversy is thus narrowed down to the single point, whether Williams, who has in good faith paid his money, and holds a legal title for his protection, has by his laches forfeited it?

Williams acted upon the faith of the evidence afforded by the registry.

These conveyances are recorded under statutory provisions, and were intended to operate as notice to all dealing with the property.

In *Beattie* vs. *Butler* it is said:

> "In England strained implications of notice are made to correct the frauds and injustice resulting from the want of a registry act.
>
> "In this State, to affect purchasers with *such implication*, is to mislead and deceive them. They have a registry law to protect them, and after they have resorted to it, and are assured of their safety, to affect them with circumstances, which are little or no evidence of notice, would be a *great injustice*." 21 Mo., *supra*.

The good or ill influence of a decision on title can only be measured by its influence on the community. The value of real estate to the public, as well as to individuals, depends in a great measure on the facility and certainty with which it can be made the subject of transfer and purchase.

Our system of registration aims at accomplishing this object by placing a faithful transcript of private titles on the public records; and whatever tends to impair or diminish the completeness or utility of this transcript is a public injury. White & Tudor Cas. Eq., 196.

Williams was authorized to act on the faith of the recorded release.

It was executed by the trustees in whom the legal title was vested.

They were appointed to carry out the trust by Mrs. Sweet, with the concurrence of Augustus Davis, the payee of the notes, intended to be secured thereby.

Williams, before he advanced his money, had not only the assurance of the maker of the notes that they had been paid, but the evidence afforded by the recorded release executed by the trustee and the payee of the notes.

It is evident, therefore, that if Williams was bound to examine the conveyance of the 1st January, 1875, he would find therein that the trustee held the legal title to secure certain notes payable to Augustus Davis, and when he was informed by him and his trustee that they had been paid, he had a right to rely on this assurance.

There is no principle of law which would deprive him of his acquired rights as a *bona fide* purchaser, because he did not go further and require proof that Davis held the notes as owner when the release was executed.

On this subject of constructive notice, this Court cites Sugden on Vendors, where he says:

> "In *Ware* vs. *Lord Egmont*, Lord Chancellor Cranworth expressed his entire concurrence in what, on many occasions of late years, had fallen from judges of great eminence on the subject of *constructive notice*, namely, that it was highly inexpedient for Courts of Equity to extend the doctrine. When a person has not *atcual notice*, he ought not to be treated as if he had notice, unless the circumstances are such as enable the court to say not only that *he might have acquired*, but also that he *ought to have acquired* it, but for his gross negligence in the conduct of the business in question. The question, then, when it is sought to affect a purchaser, with constructive notice, is not whether he had the means of obtaining, and might, by prudent caution, have

obtained the knowledge in question, but whether not obtaining, it was an act of *gross or culpable negligence.*"

Wilson vs. *Wall*, 6 Wall., p. 83.

So the Vice Chancellor, in *Jones* vs. *Smith*, speaks of "cases in which the court has been satisfied from the evidence before it, that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice," and in regard to which he further says:

> "How reluctantly the court has applied, and within what strict limits it has confined this class of cases, I shall presently consider. The proposition of law upon which this class proceeds, is not that the party charged had incautiously neglected to make enquiries, but that he had designedly abstained from such inquiry for the purpose of avoiding knowledge, a purpose which, if proved, would clearly show he had a suspicion of the truth, and a fraudulent determination not to learn it. If, in short, there is not actual notice that the property is in some way affected, and no fraudulent turning away from a knowledge of the facts, which the *res gestae* would suggest to a prudent mind; if mere want of caution, as distinguished from *fraudulent and willful blindness*, is all that can be imputed to the purchaser, then the doctrine of constructive notice will not apply; then the purchaser will, in equity, be considered as, in fact, he is, a *bona fide* purchaser without notice."

This decision was on appeal affirmed by Lord Lyndhurst, who says: "I am not disposed to extend the doctrine of constructive notice, and in expressing this opinion, I believe I act in conformity with the opinion frequently expressed by my immediate predecessor," (Lord Cottenham.)

1 Phillips, 244.

The opinion of Mr. Justice JAMES, in which Justice WYLIE concurred, is appended to this brief:

"It is not (says he) alleged that Williams has actual

> knowledge, nor is it necessary he should have such knowledge, if the law charges him with what is equivalent namely, with constructive notice."

That he had such notice is placed on the following grounds.

That the original deed of trust diclosed a contract between the grantor and the *cestui qui trust*, that the debt was not to be paid until a certain time named in the deed.

That in order that the trustee should release without violating his trust, it was indispensable that the grantor and *cestui qui trust* should make a new convention different from that mentioned in the deed by which the notes might be paid at an earlier day.

That is to say, as some of the notes had not matured when the release was executed, this is sufficient of itself to deprive Williams of his legal title.

It is true that the time of payment of the several notes are specified by the deed; but it is also true, that the deed provides for the execution of the release on payment by the grantor "*at any time* before the sale herein provided for."

Independent of this, it is not possible on any principle of sound reason to sustain the action of the court.

We adopt the language of the Chief Justice in his dissenting opinion appended hereto. He says:

> "Now if it were uniformly true, that men did not cancel debts until they became due; if there were any laws against it, it might be so. But there is not. Parties meet together and adjust their contracts. They do it every day. Nothing is more common."

The Court holds that Williams was bound to ascertain whether a "new convention" as to time of payment had been entered into between the parties.

Between what parties? So far as the deed disclosed them, they were Mrs. Sweet, the maker of the note, on the one hand, and Augustus Davis, the payee, on the other.

And when they unite in the declaration that the notes were paid before their maturity, the evidence was afforded to Williams that the "new convention" spoken of by the Court had been entered into.

There is nothing in this case to show any such want of caution as constitutes "fraudulent or wilful blindness," or that there has been such "gross or culpable negligence" as will deprive Williams of the character of a *bona fide* purchaser without notice.

If Jackson and Brothers have been deprived of their lien under the deed of trust, by the wrongful action of their trustee, they should look to him for redress. This liability they are now asserting on their appeal from the decree in favor of Stickney.

P. PHILLIPS,
W. HALLETT PHILLIPS.

Mr. Justice JAMES delivered the opinion of the court:

On the first day of January, 1875, Addie M. Sweet and Edwin J. Sweet gave to Augustus Davis their four promissory notes of that date, payable to his order; the first three for the sum of $1,833.33 each, payable respectively in one, two and three years after date, and the fourth for the sum of $2,500, payable in three years after date, all with interest at the rate of eight per cent. per annum until paid. To secure the payment of these notes they conveyed to Charles T. Davis and William Stickney a certain lot in the city of Washington, upon the following trusts therein declared; that is, "in trust to permit the said parties of the first part to use and occupy the said described premises * * until default be made in the payment of said notes, or any one of them, * * and upon the full payment of all said notes and the interest thereon, and all other proper costs, charges, &c., at any time before the sale thereinafter provided for, to release and convey the said described premises unto the said Addie M. Sweet, her heirs and assigns. * * * And upon this further trust that, upon default being made in the payment of said notes, or any one or more of them, or the interest thereon, &c., then and at any time thereafter, to sell the said described real estate at public auction." This deed was duly recorded on the 14th day of January, 1875.

The notes referred to were transferred to complainants before maturity and for value, and one of them was duly paid.

On the 15th of September, 1876, Davis and Stickney, trustees, executed a deed of release to Addie M. Sweet, which contained the following recital: "And whereas the said indebtedness and all interest, cost and expenses therein having been fully paid and discharged, as is evidenced by the signature hereto of Augustus Davis, the holder of the note for said indebtedness, the said party of the second part is hereby entitled to a reconveyance of the said described premises, and to have the same released and discharged of and free of lien, claim, demand or incumbrance, by reason of said deed of trust or anything therein contained." This deed was signed by Augustus Davis as the "party secured,"

but he was not in fact at that time the holder of the notes or the party secured.

After the execution of this release, but before it was recorded, a negotiation was had with the defendant, Samuel T. Williams, for a loan of $5,000, to be secured on the property described in the deed of trust and release above referred to, and a new deed of trust to secure the same was executed to the said C. T. Davis and R. K. Elliot. A good deal of testimony was taken on behalf of the complainants for the purpose of showing that Charles T. Davis acted in this negotiation as agent for Williams, or, at least, as the common agent of Williams and Mrs. Sweet; and upon this ground it was claimed that Williams was affected by Davis' knowledge that the release was fraudulent.

It appears that the subject of a loan to Mrs. Sweet was first mentioned by Davis to Williams; that the release was exhibited to the latter by Davis as an inducement to the loan, and that Williams required Davis to have it recorded, and to furnish him an abstract of the title before he would make the loan. It is clearly shown that all of these steps were taken by Davis at Williams' instance, but this does not show that they were taken by him as Williams' agent, since they were precisely such steps as Williams would naturally require of Mrs. Sweet herself, if he had negotiated directly with her as principal. The facts are consistent with the theory that he regarded Davis as *her* agent; and so long as they are so we are not at liberty to infer that he intended unnecessarily to adopt him as his own agent. Williams' position, then, is defined by the following facts: When he made this loan, on the security of the property in question, he had before him on the record a deed of trust upon the same property, securing a previous loan, and a release executed by the trustee long before the maturity of the debt secured. He also had before him, on the same record, a recital of the facts that the Sweets had just paid $1,833.33, which they could have retained for one year, and $4,333.33, which they could have retained for two years, at the rate of *eight* per cent. interest, and that they were immediately seeking a new loan of $5,000 at *nine* per cent. interest, to be secured on the same property. Is he, under these circumstances, to be regarded as a purchaser for valuable consideration, without notice of the prior

equity of the party whose security had been fraudulently released, and as such entitled to the protection of this court?

It was claimed at the bar, on one hand, that in these cases the borrower and the lender, in other words, the grantor and the *cestui que trust*, not only accept the trustee as their common fiduciary, but hold him out to the world as such; that the deed clothes him with power to make a release, and that strangers have a right, therefore, to assume, without further inquiry, that he has acted according to their intentions—that is to say that he has acted properly—when he does in fact make a release. The conclusion drawn is, that if he should release the security before the debt is in fact paid, and in violation of his duty, the *cestui que trust*, rather than the party who confides in the propriety of that release, must be the loser, because the former has invited the latter to have that confidence.

I conceive that no such relation exists between the trustee, on one hand, and the grantor and *cestui que trust* on the other; and I deny that either of them, especially the latter, holds the trustee out to the world as a person in whose acts the world may confide, and that he thereby invites strangers to act upon this ground of confidence. Such a conception confounds trustees of legal estates with agents, while the two capacities, and all the incidents belonging to those capacities, are as different as possible. It may be true—though the fact does not appear on this record—that the grantor and the *cestui que trust* unite, in these cases, in the selection of the trustee. Of course, in doing so, they select a person in whom they have confidence, and the law accordingly defines his relation to them as fiduciary. But that is the beginning and the end of the matter of confidence. And as for their giving to him an appearance of having authority to do whatsoever he actually does, in the matter of releasing, it seems to me to be a very plain legal proposition that, inasmuch as they are engaged in managing a matter which lies between themselves alone, they give to him no appearance whatever.

Whether he will do his duty to them, and release only when he should do so, is simply a risk which they, especially the *cestui que trust*, are willing to run *in the management of their own business;* and a purchaser engaged in an independent transaction, has no right to construe this risk

of the *cestui que trust* into an implied representation to him, that the trustee's acts may be accepted as being in accordance with his duty. He is not addressed on the subject, and he is bound to know that after the trustee is once appointed, the relations of the *cestui que trust* to him are at arm's length; and that the one is simply a party who demands, and the other a party who owes a duty. He knows that he himself, is an observer of other men's acts for his own sake, and not in any degree upon invitation, and that no representation is made to him concerning the propriety of what may be or has been done. As stranger, therefore, he has no right to look to this phase of the transaction in giving his confidence to the trustee's acts. Instead of considering the conduct of the *cestui que trust* in confiding his interests to the hands of the trustee, he must consider the acts of the trustee, and must observe whether they are apparently consistent with his duty as indicated in the deed of trust. If Williams had a right to assume that the release which he found on the record was made in accordance with the trustee's duty, it was because the terms of the instrument which undertook to define his duty appeared to invite such a belief, and to indicate that a release at that time was *prima facie* correct. I proceed, then, to consider whether Williams had a right, on this ground, to assume without further inquiry, that the release at that point of time had been made in fulfillment, and not in violation of the trust. For this purpose, I must state what I conceive to be the general principles of law applicable to this subject.

We are met, at the outset, with the objection that the trustee possesses in these cases only what is called *a power*, and that his release is inoperative to pass any estate unless it is made in the particular state of facts mentioned in the deed of trust—namely, when the debt is actually paid. This, I conceive, is a misconception. He has the legal estate, and he can transfer this at law even if, in doing so, he violates his duty. What is called *a power* in these cases, is a mere limitation of the legal power which he already has by reason of his estate, a limitation which a court of equity will enforce; and is not an instrumentality to be exercised in order to pass the estate. If it were otherwise, it would always be necessary, in making out a legal title through his conveyance, to prove not only his deed, but the facts *in pais;* and this is never done in this District. The law on

this subject was correctly laid down in *Taylor* vs. *King*, 6 Munford, (Va.), 366: "In a court of law the vendee need not show that the conditions of the deed of trust have been complied with. There have been some opinions and dicta in this court seeming to countenance a different idea; but this is our opinion upon due consideration." The same construction was given to the legal effect of a deed of trust in North Carolina, in the case of *Conoy* vs. *Troutman*, 7 Iredell, 155. (See, also, *Beattie* vs. *Butler*, 21 Mo., 319, 320.) By the release in the case at bar the legal title passed to Mrs. Sweet, and by the second deed of trust it passed from her to Davis and Elliot. This is the effect which a court of law would be bound to give to these conveyances; but we have to consider in this case how a court of equity must treat the title in the hands that now hold it.

If it should appear that the equity of the *cestui que trust* under the second deed was equal to that of the *cestui que trust* under the deed which has been released out of existence—in other words, that Williams purchased, not only without actual knowledge of the fraud practiced in the release, but without any duty to inquire into the propriety of the release—then this predicament of the legal title would be conclusive. The principle that where equities are equal the legal title will prevail, does not require that the legal title should be in the same hands with one of the equities. If a legal title has to be broken down, in order to give preference to one of two equal equities, it is immaterial whether it is in the hands of a trustee for the protection of one of the parties, or in those of the party himself. The rule is, that *if a legal title must be gotten out of the way*, in order to give preference to one of two equal equities, a court of equity must withhold its hands, and must leave the matter as it finds it. But, notwithstanding the presence of a legal title on one side, in the case before us, it is not pretended that it affords such protection, if the fact be that the purchaser, Williams, was at the time of his purchase, cognizant that the trustee had violated his duty in releasing to Mrs. Sweet. In that case, the legal title of Davis and Elliot, under which Williams seeks shelter, would be charged with the original trust in favor of the complainants, the *cestuis que trustent* under the first deed.

It is not alleged that Williams had actual knowledge of that breach of trust, nor is it necessary that he should have

such knowledge if the law charges him with what is equivalent—namely, with constructive notice. Accordingly, it is claimed that his attention was necessarily directed to an inquiry into the propriety of the transaction, and that, as he omitted to make that inquiry, he must stand as if he had notice. The question then, is whether he was put upon this inquiry by anything contained in the instruments laid before him on the record, or by anything in the circumstances of the transaction.

The original deed of trust, which was not only constructively but actually known to him, described the debt which it secured. It disclosed a contract between the grantor and the *cestui que trust*, the legal effect and intendment of which was that that debt was not to be paid until a certain time, which was named in the deed. While this contract should continue in force and unaltered, it bound not only the debtor and the creditor, but the trustee; the debtor could not insist upon paying, and the creditor could not demand payment of the debt at any other time than that named in the deed, and the trustee could not, without a violation of his trust, disregard the existing contract. I repeat, that the deed itself, which was laid before Williams on the record, informed him that, by the terms of the contract therein stated, the debt was not payable until a certain time, and that *so long as that contract remained unaltered*, the trustee was under an obligation to act according to its terms, and that it would be a violation of trust to release before the time named therein. He was told that, in order that the trustee should release without violating his trust, it was indispensable that the parties, the grantor and the *cestui que trust*, should come to a new convention, different from that mentioned in the deed, by virtue of which the debt might be paid at an earlier day. This conception is just as intelligible to a plain business man as it is to a lawyer, and any purchaser who observes that a release to the debtor has been made before the time of payment named in the deed of trust has arrived, knows that it cannot have been made properly, unless the original terms, by which the trustee was to have been governed, have been altered by the parties. He knows that the trustee's duty is prescribed by the contract of the grantor and the *cestui que trust*, that the terms of this contract limit his right and authority to act, and that, if he departs from the authority indicated by the

terms as originally expressed in the deed of trust, as he necessarily does in releasing before the time of payment therein fixed, he cannot have released properly, unless he had a *new authority by virtue of a new convention* of the parties to the contract. Now, whether any such new authority supervened must inevitably present itself to him as *a question to be decided*, and the very fact that such a question necessarily presents itself seems to me to be conclusive as to the purchaser's duty. No man has a right to guess or assume that an existing agreement has been altered by a new convention. *Prima facie* the agreement stated in the deed is the *only* agreement of the parties as to the time of payment, and therefore as to the time of release, as well as the amount of the debt and the rate of interest. There is even a presumption of law that existing agreements have not been changed; and this presumption is not a hard technicality; it is not a clumsy device for solving questions in an easy way; it has been founded upon common experience, and it is especially well founded in relation to contracts for the payment of debts. Debtors may sometimes anticipate the time of payment; but the instances in which they do so are so rare in comparison with the instances in which they do not, that the presumption against such an alteration of their agreements is overwhelming.

The purchaser in this case was confronted, then, not only with a *question*, namely, whether the trustee had received a new authority by means of an alteration of the original terms indicated in the deed of trust, but with the presumption that no alteration had occured. I am of opinion that if he undertakes to decide this question without attempting to make inquiry, he makes his decision at his own risk. I do not say that he was bound to ascertain absolutely that the notes secured by the deed of trust had been paid, but I conceive that he was bound to use due diligence to that end, and that, as he omitted to make any inquiry, his equity is not equal to that of the beneficiaries under the first trust.

It is to be remembered, in handling this question, that we are considering whether a perfectly innocent party, who has done everything that the law enabled him to do for the security of his right, shall be deprived of that security in order to protect a later comer. Certainly this is not to be done upon any doubtful theory. We see that he has been guilty of no neglect, that he has exhausted the powers of

conveyancing, and that the instrument which established his right, as well as the instrument which purports to determine it, was laid before the party who followed him on the same road. If we put him aside, it must be because the regular instrumentalities furnished him by the law, are construed to be capable of self-destruction; because the very instrument of his security assures his competitor that he need make no inquiry, notwithstanding a careful scrutiny detects a question. He is to be robbed of his rights because plain men are not expected to be lawyers, and are therefore not to be expected to perceive a suggestion that they may exist. I conceive it to be our duty, on the contrary, to see to it that the means of security which the law has invited him to us, shall not be rendered nugatory, by even the slightest omission on the part of others to scrutinize and give proper weight to the notices and warnings which his instrument of security contains. In behalf of his prior right, obtained and enjoyed in innocence, we are bound to extend no indulgence to ignorance or inattention. If the warning to take notice and make inquiry is there, it must be observed.

It is urged in the argument that the policy of the recording system relieves purchasers from these inquiries, but I am unable to perceive that this policy has anything to do with the question before us. Undoubtedly the policy of the record system relieves purchasers from inquiries after any other instruments of conveyance or incumbrance than those which appear upon the record; but it certainly does not undertake to alter or limit the effect of those which do appear there. If a deed contains matter which puts a purchaser to make inquiries, it surely does so none the less because it is recorded; and I have based my conclusions wholly upon what the record itself discloses. I can hardly believe that the legislature intended that the recording of a deed should diminish its effect in giving notice of what it contains, or in putting a purchaser on inquiry when it suggests an inquiry.

Entertaining these views of the effect of the original deed of trust, and of the policy of the recording system, I am of opinion that Williams failed to make inquiries which he was warned to make, and that he is, therefore, not entitled to the protection which courts of equity extend to innocent

purchasers without notice. The rights of the complainants, as beneficiaries under the first deed, should be reinstated.

Mr. Justice Wylie concurred.

Chief Justice CARTTER, dissenting:

I concur with the fore part of this opinion, and reject its conclusion. I quite agree with the court that the trustee in these deeds of trust is a representative created by the maker of the trust, and the party to whose uses it is made. After negotiating a loan, they sit down together and consult with each other, who shall personate the security for its redemption, and nominate a man for that purpose, and give to him the highest possible credit, and that is the fee simple of property that constitutes the security. If this trustee puts the trust in his pocket, and does not put it on record, the party to whose use it is made finds himself with a security that would not take effect as against a second purchaser, without notice. Under such circumstances, if the owner should see fit to sell again, a second purchaser without notice might have title as against such unrecorded security. But in this case he does not put it upon record; he transmits it to the archives of the law, a place, and an officer, and a condition established by law for the purpose of informing the world of the condition of the given property. The law-makers have said to those who deal in real estate: "We will give you a signal that cannot be mistaken, when you buy and sell. If you want to know whether you are purchasing property without encumbrance, go to the recorder's office and inquire; and if you do not find any there, you may be assured that there is no encumbrance which you have not knowledge of." That is what the law says to the party.

He puts it upon the record; and the logic here is, (and in this I do not understand myself as differing from my brethren, the majority of the court,) he does give notice. But when the same man obliterates the record which he has created, they say that it doesn't do anything. Now, the logic of this matter is, that the act of obliterating the record, under the same power that created it, is of equal dignity and force, and as conclusive upon the parties. I am not certain that a majority of the court are in disagreement upon this question at this point. But it is said (and the conclusion of the court is superinduced by the fact) that here is the satisfaction of an encumbrance before the debt

is due, and therefore it is notice to the purchaser that the trustee has not power to make it. Now, is it notice of any such thing? Not a bit of it. The parties in convention over that title, holding sovereignty of that property, have power to sell it at any time. The fact that property is encumbered does not presuppose that all treaty as to its disposition is to be supended during the period of its encumbrance. It leaves the parties subject to the encumbrance, to deal with their own property, and honestly to deal with it. But, it is said the fact that the debt is not due is a reasonable notice that the agent acted in fraud of his trust in discharging it, and that it is a notice to the purchaser of the existence of the fraud.

Now, if it were uniformly true, that men did not cancel debts until they came due, if there were any law against that, it might be so, but there is not. Parties meet together and adjust their contracts—they do it every day. Nothing is more common, in the history of material life, than for parties to get together and readjust their contracts.

The law deals with a fraud in fact. It does not borrow the presumption. Here is an agent created by a convention of the parties, who is authorized to do just what he has done. I understand this opinion recognizes the fact that he was in full authority to do just what he has done. But it says, inasmuch as you could have seen, if you had read the thing through and investigated it, or perhaps advised with a lawyer, that there is something extraordinary about the business, you had better go to investigating.

Now, I hold that this statute was created for the purpose of exempting parties from investigation. It was not addressed to lawyers, but to men who buy and sell property. It is a domestic record. An officer is created with the supposed integrity to execute the duties of his office, and a man is not obliged to go to a Philadelphia lawyer to ascertain whether a mortgage is on it, and whether the deed of trust is delivered or not. He goes to the officer in charge of the record and asks him if there is any encumbrance upon a piece of property. The answer would have been no; there was one, but it has been discharged.

Now, the theory of the opposite doctrine is that he cannot be contented with that publication, but he must go round and see how it is, and find out some resulting trust, some

constructive notice, some mysterious conclusion which has been worked out by equity jurisprudence to find a flaw in it. The law does not contemplate any such thing. It is a plain, practical rule, for the government of plain, practical life, of every day transactions. The fraud that would vitiate it, I hold, must enter into the mode of the satisfaction, the process of the said satisfaction. If the satisfaction has been brought about by perjury, if it has been brought about by the intervention of fraud, on the part of the party who is to take advantage of it, where there is no satisfaction, it is avoided by reason of fraud. But the only criticism the proceeding is subject to, under the policy of the recording act, is a criticism upon the mode of discharging the encumbrance and the instrumentalities of doing it; and the fact whether the debt is due, or had been paid five or ten years before it was due, is not a material fact in the matter. I only differ with the majority of the court that they give to the payment of a debt an effect which the law does not, and for this reason I must differ from their conclusion.

Present the Chief Justice and Associate Justices Wylie and James.

17-478

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1882.

SAMUEL T. WILLIAMS,
Appellant,

vs.

BENJAMIN L. JACKSON,
WILLIAM B. JACKSON, AND
GEORGE J. SEUFFERLE.

No. 209.

Brief for the Appellant, Williams.

WM. A. MAURY,
Counsel for Appellant.

R. O. POLKINHORN, PRINTER.

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No. 209.

Brief for the Appellant, Williams.

Statement.

This is a bill filed in the Supreme Court of the District of Columbia, holding a Special Term as a Court of Equity, by Jackson Brother & Co., to set up and enforce, as a first lien on lot 49, in Augustus Davis's subdivision of lot 8, in square 513, in the city of Washington, and the improvements thereon, a deed of trust, dated 1st January, 1875, from Addie M. Sweet and her husband, Edwin J. Sweet, to Charles T. Davis and William Stickney, to secure three notes for $1.833.33 each, dated 1st January, 1875, payable in one, two and three years after date, with interest at 8 per cent., payable semi-annually, and one note for $2,500, of same date, payable three years after date, with interest at

8 per cent., payable semi-annually. (Rec., p. 8.) Each of these notes was made payable to the order of Augustus Davis; and all of them were transferred to the plaintiffs—the first three very soon after their date, and the fourth somewhat later, and long before maturity. The first note was paid, but the other three are unpaid and still held by the plaintiffs, who claim to be holders in good faith, and for value.

In this predicament of things, and on the 28th September, 1876, there was recorded in the land records of this District a deed of release reconveying to Addie M. Sweet the lot conveyed by the said deed of trust, discharged from the trusts of the said deed. (Rec., p. 11.) This deed was executed by the trustees, Davis and Stickney, *and* Augustus Davis, describing himself as the "*party secured*," he being the payee of the notes secured, and it being recited in the deed of trust thus released, that Mrs. Sweet and her husband "*are justly indebted unto Augustus Davis in the full sum of eight thousand dollars*," &c., &c., (Rec., p. 8,)—the aggregate amount of the four notes secured—which, it may be added, represented nearly the whole purchase money for the said lot, which Sweet had purchased from Davis.

The deed of release, after reciting the deed of trust, contains this further recital:

> "And whereas *the said indebtedness*, and all interest, cost and expenses thereon *having been fully paid and discharged*, as is evidenced by the signature hereto of Augustus Davis, the holder of the note *for said indebtedness*, the said party of the second part is hereby entitled *to a reconveyance* of said described premises, and to have the same *released and discharged* of and free of lien, claim, demand or incumbrance, *by reason of said deed of trust or anything therein contained*."

On the same day as that on which the deed of release was recorded, but *after* said deed was admitted to record,

there was also recorded a deed of trust from Mrs. Sweet and her husband to the aforementioned Charles T. Davis and R. K. Elliot, dated 27th September, 1876, and conveying the said lot 49 in trust to secure Mrs. Sweet's note of $5,000, of even date with the deed, payable to the order of the appellant, S. T. Williams, four years after date, with interest at 9 per cent.

The said lot was further encumbered by two deeds of trust from Sweet and wife. One to the said Charles T. Davis, dated 27th September, 1876, *but not recorded* until the 29th of the same month, securing Mrs. Sweet's six notes for $530.26, of even date with the deed, and payable respectively at six, twelve, eighteen, twenty-four, thirty, and thirty-six months after date (Rec., p. 4); and the other, dated 17th October, 1876, to J. Stanley Jones, to secure Edwin J. Sweet's note for $650, of even date with the deed, and payable to the order of Richard E. Pairo, two months after date. (Rec. p. 4.) As the two deeds last mentioned are unimportant in this case, they are not given in the record.

The interest on the note of $5,000, held by Williams, being in arrear, the trustees, Davis and Elliot, pursuant to the powers of the trust-deed, sold the lot in question and the improvements, on the 17th July, 1877, to Eli S. Blackwood, for $6,325, of which $1,325 was paid in cash, and by a deed of the same date conveyed the same to him, Blackwood, (Rec. pp. 15, 16,) who, on the same day, conveyed the lot and improvements to Mahlon Ashford and Augustus Davis to secure his note for $5,000, of the same date, and payable four years after date to the order of the trustees, Davis and Elliott, with nine per cent. interest, payable semi-annually (Rec. pp. 17, 18); which said note the said payees endorsed and delivered to the appellant, Williams, in satisfaction of the note of like amount secured by the trust deed which was foreclosed. Blackwood after-

wards conveyed his equitable estate in the premises to Ida S. Davis, wife of the said Charles T. Davis.

The Pleadings.

The BILL charges that the deed of release executed by Davis and Stickney is a nullity, because, at the time it was made, the notes held by the appellees and secured by the trust deed which it was sought to extinguish were unpaid; and the bill also charges that at the time the appellant, Williams, took the $5,000 note, dated 27th September, 1876, "the said pretended release was not recorded," and that Williams, thus having notice of the appellees' lien, cannot supplant that lien. The bill also charges that the sale to Blackwood, being coupled with a secret trust for the benefit of the trustee, Davis, is invalid; which, however, involves a matter wholly foreign to the *gravamen* of the bill, even if it were otherwise meritorious, and making parties defendant, the said Blackwood and the said Charles T. Davis and Ida S. Davis, Sweet and wife, Augustus Davis, R. K. Elliott, Mahlon Ashford, J. Stanley Jones, R. E. Pairo, William Stickney, S. T. Williams, and The Citizens' National Bank, alleged to be a holder of some of the notes secured; and prays that the release aforesaid may be declared void as against the trust deed to Davis and Stickney; that the sale to Blackwood may be set aside; that Charles T. Davis may be removed as trustee, and another person appointed in his room, or that the court may appoint a trustee to sell the property in question; that Davis and wife and Blackwood may be enjoined from conveying said property, and that the trustees, Ashford, Augustus and C. T. Davis, and Jones, may be restrained from proceeding under the trust deeds aforesaid; and that Williams, Pairo, The Citizens' Bank, and Augustus Davis, may discover what is due on the notes "pretended to be

secured as aforesaid," and who are the holders thereof, &c., ending with a prayer for general relief.

Answers.

The appellant, Williams, denies that when he took the $5,000 note, the release from Davis to Stickney was unrecorded. He denies the intimation in the bill that he had notice of the alleged lien of the appellees. Avers that he made the loan in perfect good faith on 28th Sept., 1876, and not the day previous, as intimated in the bill; that he acted in full reliance on Ashford's abstract of title, showing that the release was on record, before he lent the $5,000; that he acted in entire good faith, and without knowledge of any fact which might vitiate his security, and *up to the filing of the bill in this cause, had no information, or suspicion even, of the appellees' unsatisfied claim under the trust deed to Davis and Stickney;* but that, on the contrary, the land records of the District contained express notice that no such claim existed. (See answer, pp. 24, 25; and amended ans., pp. 31, 32.)

The defendant, Stickney, says, in his answer, that, as was his habit, he required satisfactory evidence that the notes secured had been paid, before executing the release, but that he cannot recall what the evidence was; that he was well satisfied of the payment of the debt, and that the release ought to be executed, and that, accordingly, he executed it in good faith. (Rec., pp. 26, 27.)

The Citizens' National Bank, in their answer, say that they hold three of the six notes of $530 [$530.26 is the amount] each, secured by the trust deed to C. T. Davis, as collateral security for a certain note. (Rec., pp. 27, 28.)

The defendant, Edwin J. Sweet, admits the execution of all the trust deeds, and says that they were made in good faith. He denies all charge of unlawful or other combinations, and says if injury has been inflicted, it has not been done by his agency, in any way, and that if the trustees had done their duty the notes would have been cancelled, and he would not have been injured. He says the property in question was purchased by him for his wife as a home, and that all the notes given by him and his wife, except the one secured by the trust deed to J. Stanly Jones, were for the purchase money of said property, or in the room of other notes given for that object, and that neither he nor his wife has ever received, directy or indirectly, one dollar of the money arising from "the sale or trade of any of these notes." He then goes on to answer so much of the bill as refers to an agreement between him and C. T. Davis, by which Davis was to buy the property in question for him, Sweet, at the foreclosure sale, made by said Davis and Elliot. He says he is willing to assume all the incumbrances on said property, and that the property should be adjudged to be his, as against the claims of C. T. Davis, his representatives or assigns, and the plaintiffs in this cause. (Rec., pp. 29, 30.)

The defendant, R. K. Elliot, answers so much of the bill as refers to him; which, however, has no relevancy to the question of priority which arises in this case. (Rec., pp. 32, 33.)

The defendants, Augustus and C. T. Davis, in their answer, after admitting the averments in paragraphs one and two of the bill, deny everything in third, fourth, and fifth paragraphs of the bill inconsistent with the following state of things, namely: that the three notes for $1,833.33 were endorsed by the payee and delivered to plaintiffs in settle-

ment of an *unsecured* note of defendant, Augustus Davis, for $5,000, then held by plaintiffs, and that the remaining note for $2,500 was endorsed by both defendants, and sometime afterwards delivered to plaintiffs, in exchange for certain other unsecured notes. They say there were numerous transactions between them and the plaintiffs, covering a long period of time and involving a large amount of money; that plaintiffs were in the habit of discounting unsecured paper endorsed by the defendants; that the notes aforesaid were accepted by the plaintiffs *entirely* upon the faith and credit of defendant's endorsements; and that no deed of trust was ever shown plaintiffs, who did not know the notes were secured, and did not look to the property involved as security.

The defendant, C. T. Davis, says that Sweet told him the notes held by complainant had been settled, and believing this to be so, he executed the release.

The defendant, Augustus Davis, says he held one of the notes [the first one, which was *paid*]; signed the release, at the request of C. T. Davis, presuming that his signature as holder of the said note and as beneficiary of said trust was necessary.

They say that C. T. Davis did not consult plaintiffs, because they had accepted the notes "upon the strength of the endorsement and guaranty as aforesaid," and that the execution of the release "was substantially in good faith with complainants." They say that when they endorsed the notes they were "in good financial condition, doing a large business, the owners, jointly and severally, of a large amount of real estate, and their joint and individual credit unimpaired."

They admit paragraphs six and seven of the bill, but neither admit nor deny paragraph eight. They admit the ninth paragraph, with a qualification, as to C. T. Davis, that the sale there referred to was valid, and not "pre-

tended." Protesting that the release was not fraudulent, they admit the tenth paragraph, so far as it refers to them. C. T. Davis admits the eleventh paragraph; and as to paragraph twelve, he denies the charge that the release was not recorded until after the recording of the trust deed to secure Williams; and both defendants deny that Williams had notice through them. Denies any secret understanding between himself and Blackwood and Sweet, and says that he and his co-trustee, Elliott, executed the trust in the usual way. They say that plaintiffs have sued at law upon the notes in question, and that plaintiffs should be remanded to their remedy there, and the bill dismissed.

The answer of Ida S. Davis relates entirely to her connection with the property in controversy as grantee of Blackwood, and is, therefore, immaterial to the question of priority. (Rec., pp. 36, 37.)

The defendants, Ashford, Jones and Pairo also answered, but their answers have no bearing on the subject of priority.

The defendant, Addie M. Sweet, *did not answer at all*, nor did her co-defendant, Blackwood, and, accordingly, the bill was taken for confessed against both of them. (Rec., p. 38.)

Decree.

The cause coming on to be heard, it was, *inter alia*, decreed that the prayer of the bill, that the deed of release from Davis and Stickney to Addie M. Sweet should be set aside and declared void, should be denied, but a personal decree for $6,166.66, the aggregate amount of the notes held by the plaintiffs, was rendered against Augustus Davis, Charles T. Davis, William Stickney, and Edwin J. and Addie M.

Sweet, with interest at 8 per cent. from 1st July, 1876, and costs. It was, also, decreed that the property should be sold, first, to pay the note held by Williams, who is decreed to have a priority over the plaintiffs, and out of the surplus to pay the notes held by the plaintiffs. (Rec., pp. 240, 242.)

From this decree Jackson Brother & Co. appealed to the Court in General Term, where the decree was reversed as to Williams and Stickney, and otherwise affirmed, with some modifications, which it is unnecessary to notice. The decree gives priority to Jackson Brother & Co. over Williams, as encumbrancers of the said property. (Rec., pp. 244–5.)

From this decree Williams has appealed to this court.

Argument.

It is perfectly clear that, whether the release was tortious or not, its necessary effect was to reinvest Addie M. Sweet with the legal title of the property in question, and, as a consequence, that the legal title passed from her to Davis and Elliot, and from them to Ashford and Davis, who now hold it, impressed with a trust for the benefit of the appellant, Williams. Treating, then, the seizin of his trustees as his own seizin, Williams has the vantage ground of the legal title, and before equity will dislodge him it must be made to appear that some one else has a paramount equity, and a better right, to hold the legal title; for, if there is no more than an equal equity in another, the law must prevail.

It is claimed that there is a paramount equity in the appellees, Jackson Brother & Co., and this, upon a state of facts which is not, by any means, likely to prepossess the judicial mind in their favor; for the evidence would seem to warrant the statement that the appellees took the notes in question on the credit of the endorsers, and not at all on the faith of the real security by which the notes were protected, if, indeed, they had, then, any knowledge whatever of the

existence of that security; and, furthermore, that three of the notes in question were taken in satisfaction of other notes *unsecured*, which had been taken from the Davises by the appellants, who would thus seem to occupy the position, somewhat, of creditors who have obtained security for an antecedent debt unsecured, which renders it questionable whether they come under the category of purchasers *for value*. On the other hand, the appellee, Williams, parted from his money *exclusively* on the faith of the security offered, and in no sort on the credit of the borrower, Mrs. Sweet.

If the appellees relied on the trust deed, their conduct, as men of business and ordinary prudence, is unaccountable.

On their part, the transaction was conducted by Wm. B. Jackson, one of the firm, who tells us that he never visited or saw the property conveyed by the trust-deed of 1875, until after he heard of the release, *but relied entirely on C. T. Davis's opinion that it was ample as security!*

It is true, this witness says that he did rely on the trust-deed, and that he received the deed, insurance policy, and abstract of title at the time he took the notes; but it turned out, on cross-examination, that he had no independent recollection on the subject, and testified to the above effect, because, as he said, he never discounted unsecured paper for the Davises; which ground of belief, however, was entirely swept away by his admission that he had taken Augustus Davis's *unsecured* note for $5,000, being Exhibit of Plaintiffs' Depositions marked J. N. O., No. 9½. This same witness sets out with positive statements that he gave Davis money or bonds, or both for the notes, and ends by admitting that he may have taken the three notes of $1,833.33 in satisfaction of the above-mentioned note of Davis' for $5,000. Added to this, he says that his concern *has no book that will show the character of the transaction.*

In this state of memory be-clouded as to a transaction

of $8,000, *we prefer the witness's actions to his words*, and cannot but believe the statements of the Davises in their answer as to the character of the transactions; nor is there anything incredible in these statements, for Jackson testifies that he had money transactions with them to a large amount, and that he had unshaken confidence in them until sometime after the Sweet notes were discounted.

The Question of Notice.

It is not pretended that Williams had actual notice that the notes held by the appellees were unpaid. The most that is imputed to him is (1) constructive notice, growing out of an alleged duty on his part to establish, by his own inquiry, whether the execution of the deed of release was, in fact, warranted by the full discharge and satisfaction of the notes secured by the trust-deed; and (2) constructive notice, growing out of the alleged existence of the relation of principal and agent between him and the offending trustee, Davis; and (3) constructive notice in that he was put on inquiry by the act of the trustees, Davis and Stickney, in departing from the authority of the deed of trust in executing the release before the maturity of all the notes secured.

The attempt to fasten on Williams the duty to make inquiry into the exact state of the relations between the offending trustees, Davis and Stickney, and whomsoever might chance to be the holder or holders of the negotiable notes secured, proceedes, in our apprehension, upon a misconception of the true nature of the powers of trustees in deeds of trust for the purpose of security.

There is no room for doubt that deeds of trust to secure obligations are *ejusdem generis* with mortgages. Indeed, it has been held, always, that the term mortgage in registration acts, includes them.

To have a proper conception of the true nature and office of the deed of trust for security, we must examine into the state of things which led to its introduction.

Such was the tenderness of equity towards the owner of the equity of redemption, its creature, that it would not allow his rights to be cut off by any thing short of a decree in a plenary suit upon a bill of foreclosure, leaving now out of view, as immaterial to the case in hand, the effect of prescription, in certain cases.

The delay and expense of this mode of barring the equities of the mortgagor were so oppressive, and such clogs to business, that conveyancers made bold to remedy these evils by introducing into the mortgage a power to the mortgagee to sell and convey the mortgage subject, in case of the mortgagor's default. This innovation met with much opposition, notably from Lord Eldon, as was to be expected of that great opponent of change, before it effected a permanent lodgment. But great as was the improvement thus created, it was, itself, the parent of other evils of a serious character. The power of sale to the mortgagee, if brought into activity, placed him in the antagonistic relations of trustee for himself and the debtor, too, with a constant temptation to use his power to the detriment of the latter, or whoever else might own the equity of redemption. Hence it was held, notably in Virginia, that in such cases there could be no foreclosure *in pais*. It was to remedy the evils attending this conflict of duty and interest in the mortgagee, that the deed of trust was employed as a security. The distinguishing feature of this sort of security is, that, by placing the legal title in a trustee or trustees selected by the parties, whose sole interest is to do what makes for justice, it combines, in theory, the fairness of the judicial proceeding with the facility of the mortgage with a power of sale.

There was a further inconvenience attending the security by mortgage. The estate of the mortgagee was conditional, and liable to be entirely destroyed by payment or tender of the debt, according to the terms of the condition. But such was not the effect of a payment after the *law day*, as it was called, had passed, for then the estate of the mortgagee had become absolute, and could not be divested, except by a reconveyance. Now, a purchaser dealing with a title which had been encumbered by a mortgage alleged to be satisfied, must, in the absence of a reconveyance, ascertain at his peril whether the mortgage debt was paid or tendered in accordance with the condition.

It is apparent that such difficulties must needs have constituted a serious impairment of the *jus disponendi*, and that a mode of revesting estates where the mortgage was destroyed by performanceof the condition, without the necessity of any record, or even written evidence whatever, was in direct conflict with the spirit of the registry laws in America; and, hence, it is easy to see, that the necessity of a recorded release of the title by the trustee in case of payment of the debt, was not the least potent consideration that commended the trust-deed as a mode of security.

Now, as the history of the trust-deed shows that it originated in a desire to be rid of the delay, inconvenience, and expensiveness of the mortgage, it would seem self evident that to construe the powers given to the trustees in these deeds in such wise as to make it hazardous for innocent third parties to deal with them, would not only impair the usefulness of these powers, but subvert the end and object of this mode of security, and introduce evils far greater than those that brought the old mortgage into discredit.

To answer the purpose of its origin, therefore, a foreclosure by trustees, acting apparently within their powers,

must have the finality of one by decree, and a release by trustees must, like a reconveyance from mortgagee to mortgagor, be conclusive evidence of payment of the debt secured, certainly as to innocent third parties. If this is not so, it is difficult to comprehend what there is in the trust-deed to make it preferable to the mortgage.

That deeds of trust have become a favorite security, wholly supplanting the mortgage in some parts of the country, is due to the feature that it is the intention of the contracting parties that their chosen agents, the trustees, shall represent them in the fullest manner, so that their acts, ostensibly within their powers, shall be final. In this way a debtor, by producing the trustee's release, is able to show, *conclusively*, that his title is no longer encumbered. If this were not the effect of a release, and a party desiring to purchase were bound to make inquiries behind the deed, the difficulties and hazards besetting him would disincline him to buy, and this alarming result would follow, that *a title which had been once encumbered with a trust deed would be practically discredited in the market;* for, if the theory relied on by the appellees is founded, the validity of the discharge of such encumbrance by a deed of release duly registered would depend upon the existence of extraneous facts, which the purchaser must ascertain *at his peril.*

Deeds of trust were introduced to aid and facilitate credit, but their purpose would be wholly defeated if the safety of a party dealing with the trustees depended upon the results of his own inquiries, for prudent men would not take titles of that sort; and, hence, securities of this kind would be *worthless*, unless they contained a clause *discharging third persons from the duty of prosecuting all such inquiries*, which has never been deemed necessary for the security of purchasers.

It has been regretted that the principle charging purcha-

sers from trustees, in certain cases, with the duty of seeing to the application of the purchase money was ever introduced; and it is noticeable that the trust deed made to secure the notes held by the appellants expressly discharges any purchaser from that duty. Why was this clause introduced into the deed? Undoubtedly to commend the security by emancipating the power of sale from the clog which this principle of equity would have put on it. Is it not fair to assume, then, that if the parties had thought there were any *other clogs* on the trustees' power they would have removed them also?

It is an established canon of construction that written instruments are to be interpreted in such a way as will best effectuate the intention of the parties. There is nothing, however, in the language of the deed in question to compel the adoption of a reading requiring third parties to go behind the acts of the trustees, and we do not think any one will be bold enough to assert that there is anything in the history or nature of the trust deed demanding such a reading to effectuate the intention of the instrument.

But it is said by the learned court below that Williams was not a purchaser *bona fide*, because he had notice on the face of the deed of trust released that some of the notes secured thereby were not due at the time of the execution of the release, and, therefore, seeing that the release could not have been validly executed without a new convention between the maker and holder of the notes referred to, that Williams came under a duty to inquire whether the release was authorized by some new contract or understanding in that behalf.

But of whom was he to make inquiry? Manifestly, if of any one, it was the trustees or Augustus Davis, the payee of *all* the notes secured, or the payee and the trustees. But he had, in the deed of release, the representations of all

three that "*the said indebtedness and all interest, cost, and expenses thereon*" had been "*fully paid and discharged.*" (R., p. 11.) Why should he have distrusted the solemn recitals of the release, and supposed that the replies to any inquiry he might make of the parties to that instrument would be variant from those already given?

Again, was he to go to the makers of the notes to ascertain whether the payee's acknowledgment of satisfaction was correct? As it would be *crassa negligentia* to act upon the acknowledgment of satisfaction of the debtor without that of the creditor also, resort to the former would be useless, and cannot be required by the law, which no more requires vain, than it does impossible things.

If there had been no public registry of deeds, and Williams, upon being applied to by the Sweets for the loan, had asked for the title-deeds, and, upon their giving a reasonable excuse for not producing them, had lent the money, and it should have turned out afterwards that the deeds were in the hands of an equitable mortgagee, it is settled that notice of this could not have been imputed to Williams. Yet this supposed case is far weaker than the case at bar.

The mischiefs that must ensue upon such refining on the doctrine of constructive notice, which has been carried far enough, if not too far, already, are obvious. To borrow the language of Sir James Wigram, in the leading case of *Jones* vs. *Smith*, (1 Hare, 43): "The affairs of mankind cannot be carried on with ordinary security, if a doctrine like that of constructive notice is to be refined upon until it is extended to cases like the present."

In that case, Smith, before advancing money on a mortgage, inquired of Jones, the mortgagee, and his wife, whether any settlement had been made upon their marriage; and was informed that a settlement had been made, *but of the wife's portion only, and that it did not include the husband's*

estate, which was proposed as the security; and he afterwards advanced the mortgage money without having seen the settlement or known its contents, upon the security of a term, prior in date to the settlement.

It was held by the learned Vice Chancellor that the mortgagee was not affected with constructive notice of the contents of the settlement, or of the fact that the settlement comprised the husband's estate. "Where is the ground," said the court, "for questioning the honesty and *bona fides* of Smith, even if his caution could be successfully impeached? How can any thing, exceeding want of caution, be imputed to the man who parts with his money upon the bare faith of a security, without any assignable motive?" And the learned judge goes on to say that if the doctrine contended for was sound, then marriage alone would be constructive notice of any settlement that may have been executed; "and" he proceeds, "why, upon the same principle, should not every man who deals with his neighbor, without knowing he is married, be affected with notice of his marriage (if any), and thence with notice of the contents of the settlement?"

The application of that case to the one at bar is obvious. If Smith, the mortgagee was discharged from all duty of making inquiry by the representations of parties interested in making false answers to his inquiries, how was Williams, who, like Smith, lent his money on the faith of the title, bound to go behind the self-disserving declarations of Augustus Davis, the ~~debtor~~ creditor named in the trust deed?

If Williams was bound to inquire whether there had been, in fact, an agreement on the part of the payee of the notes to accept satisfaction of them before maturity, after the payee had told him so, by becoming a party to the release, why was not Smith also bound to go behind the representations of Jones and wife, and demand to see the settlement?

Surely, this Court say, in *Wilson* vs. *Wall* (6 Wall., 90, 91), "a chancellor will not be astute to charge a constructive trust upon one who has acted honestly and paid a full and fair consideration without notice or knowledge;" and they, also, lay down in that case, that to affect a purchaser with constructive notice, it must appear not that he had the means of obtaining, and might by prudent caution, have obtained, the knowledge in question, but that his not obtaining it "*was an act of gross or culpable negligence.*"

In the recent case of *Ratcliffe* vs. *Barnard* (L. R. 6, Ch. 652, 654), cited in the very recent case of *Kettlewell* vs. *Watson* (L. R. 21, Ch. Div., 706), the court referred to the negligence to affect a purchaser with constructive notice as "willful negligence which leads the court to conclude *that the person is an accomplice in the fraud.*" And the court in the latter case say: "In other words, what you require is evidence showing a desire *or fixed purpose to avoid knowing more.*"

In the face of a general concurrence of opinion, that the doctrine of constructive notice should not be extended, the learned court below actually indulges in, and, it would seem, creates for the occasion, the presumption that "existing agreements have not been changed," a presumption unsupported by experience, in order to get a basis for imputing notice to Williams.

In treating Williams, who had no actual notice or knowledge, as all concede, as having notice by construction, the court has necessarily held that he was guilty "of the willful shutting of the eyes to facts;" that he was "an accomplice in the fraud;" that he fraudulently turned away from a knowledge of facts which the *res gestæ* would suggest to a prudent mind; and, therefore, that his getting the legal estate was *machinatus ad circumveniendum*, for such is the deduction drawn by Lord Hardwick, in *Le Neve* vs. *Le Neve*, from these premises.

Can the wit of man discern how Williams would have been any better off, as we have said, if he had insisted on having the informal declarations of the parties to the release? Is it to be presumed that they would have falsified the record they had made already by the release?

It was carrying the doctrine of constructive notice to an alarming, and, with all respect, extravagant length, to place Mr. Williams, whose perfect integrity and high character are fully conceded, in the relation of *an accomplice in the fraud* on the appellees which was practiced by the two Davises and the Sweets; for such, indubitably, was the effect of imputing notice to him.

The learned court seem to have lost sight of the principle that the *bona fides* of a party who pays his money on the faith of a title is not open to question.

If a purchaser cannot safely act on the faith of the trustees' release, on what is he to act? What means has he to support an inquiry into the administration of the trusts? Is he to go further, and follow the negotiable notes until he finds the last holders of them? And when cancelled notes are produced how is he to know that there are not other notes outstanding *in renewal* of those very notes, or that the latter are not duplicates of the notes described in the trust deed, as has actually happened in this district? Say the Supreme Court of Iowa, addressing themselves to this point: "It seems to us that to require such inquiry or diligence is to reverse all the well-settled rules, and to impose a duty upon him [the purchaser] not recognized by any of the cases, and certainly not in consonance with reason." (14 Iowa, pp. 551–2, *Bank of Indiana* vs. *Anderson*).

It is upon the principle that he has no means of supporting an inquiry that a purchaser of an estate charged with debts generally, or *even legacies* taking rank after a charge for payment of debts generally, is under no duty whatever

to see to the application of the purchase money. To have fastened on the purchaser the duty of applying the purchase money in such cases would have been nothing less than to "declare that land should cease generally to be the subject of sale; for no amount of diligence on the part of a purchaser would insure his title," to borrow the language of this court in *Neslin* vs. *Wells*, (104 U. S., p. 436.)

Powers to be effective must be free from conditions and restraints. Of this we find a striking illustration in the law of executors and administrators. A purchaser from them, in good faith, need have no fear of having his title brought into question. Hence where the rights of the mortgagee of an executor were assailed, on the ground that there were no debts, of which he was bound to take notice, the court replied that the remedy was against the executor; that if the property could be followed into the hands of a purchaser, "*no one would venture to buy of an executor*," and, further, that to require purchasers to make inquiries into the condition of the estate would lay executors under *an incapacity and disability to sell.* (2 Vern., 445, *Humble* vs. *Bill.*) In another case, the court said that to allow assets to be followed into a purchaser's hands, "*would lay an embargo*" upon estates in the hands of personal representatives. (2 P. Wms., 149, *Ewer* vs. *Corbet.*) In another case, involving the same point, the court say, "for *to entertain a doubt* to the contrary, would *make it impossible for an executor to raise assets, as no person would venture to buy.*" (2 Atk., 42, *Elliott* vs. *Merriman*, S. C., 1 Lead. Cas., Eq., p. 74, ed. 1876.) In the great case of *Scott* vs. *Tyler*, (Dickens, 725,) Lord Thurlow lays down the same doctrine; and in *McLeod* vs. *Drummond*, (17 Ves., 153–4,) Lord Eldon said that an executor's powers are large "*for the purpose of enabling him to execute his trust and to prevent the general inconvenience of entangling third persons in enquiries as to the application he may propose to*

make of the money produced by the conversion of the asssets." See, also, *Smith* vs. *Ayer*, 101 U. S., 327; *Carrington* vs. *Goddin*, (13 Gratt., 587,) *Davis* vs. *Christian*, (15 Gratt., 11,) and *Garnett* vs. *Macon*, (2 Brock., 186, S. C., 6 Call., 308). In the last case, Chief Justice Marshall lays down, that no one has a right to suppose that a trustee intends to violate his duty, he being the trusted agent of the owner of the trust subject.

So impressed was the late Lord St. Leonards with the impolicy and mischievousness of clogging powers of sale and exchange with conditions, that he declared it to be his opinion that it was better to put no such power in a settlement than to insert it hampered with conditions, for *as a power*, he said, it will be *useless*, because *no one would take, or could be compelled to take, a title under it without the protection of a decree.* (2 Sugden Pow. [478].)

We beg, also, to ask the attention of the court to what fell from the Lord Chancellor and Lord Justice James, in the case of *Barnes* vs. *Addy*, (L. R., 9 Ch., 252), touching the danger of visiting with liability persons innocently dealing with delinquent trustees. The Lord Justice James said: "I have long thought, and more than once expressed my opinion from this seat that this court has, in some cases, gone to the very verge of justice in making good to *cestuis que trust* the consequences of the breaches of trust of their trustees at the expense of persons perfectly honest, but who have been, in some more or less degree, injudicious—I do not think it is for the good of *cestuis que trust*, or the good of the world that those cases should be extended."

It has been repeatedly held that an entry of satisfaction of record by a mortgagee is conclusive as to a purchaser, although, at the time the entry was made, the debt secured had been assigned to another who had no knowledge of it. (14 Iowa, 545, *Bank of Indiana* vs. *Anderson;* 16 Iowa, 591, *McClure* vs. *Burris;* 30 Iowa, 212, *Cornog* vs. *Fuller;*

13 Ohio State, 419, *Swartz* vs. *Leist;* 17 Am. Law Reg., N. S. 634, *Ayres* vs. *Hayes.*)

These cases proceed on the ground that the mortgagee is the registered holder of the legal title, and that a subsequent *bona fide* purchaser can safely act on his reconveyance to the mortgagor, even though he may have assigned the mortgage-debt, previously, and so have become merely a trustee for the benefit of his defrauded assignee.

In *Field* vs. *Holland*, 6 Cranch, 23, MARSHALL, C. J., said that before purchasers of land, sold under a *satisfied* judgment, could be divested of their title under the sheriff's deed, it must be shown that "*sufficient notice was given to the purchasers to put them on their guard.*" See, also, what fell from the same judge in *Fletcher* vs. *Peck*, 6 Cranch, 133.

It has been also decided that a purchaser claiming through a sale under a trust deed *is not bound to make inquiries outside the record.*

70 Ill., 46: *Wilson* vs. *South Park Comms;*
79 Ill., 79: *Gunnell* vs. *Cockerill;*
See, also, 10 Johns, 197: *Jackson* vs. *Henry.*

And it is conceived that the numerous cases decided by this court upholding municipal bonds have all proceeded on the consideration that it would have paralyzed the power to issue negotiable securities to require purchasers of them to look beyond the face of the securities themselves.

It is to be remarked that the authority given to the trustees of the released deed of trust to release and reconvey is to do so "*at any time before the sale,*" upon full payment of all said notes with the interest thereon, and the usual incidental costs and charges. (R., p. 8.) The power, in this regard, is not limited to the time subsequent to the maturity of the note last due.

The deed of trust embodies a contract between the parties to it, and the case turns on the interpretation of the lan-

guage used by the contracting parties, as in the case of any other contract.

The fact that in this case and other cases of fraudulent releases, implicit faith has been given by purchasers to the acts of the trustees is strong evidence to show the view entertained of the powers of trustees by business men in this community. And it is respectfully submitted that if this court should put an interpretation on this class of contracts different from that given by the community using them, the effect will be to raise clouds upon many titles and cause general alarm.

The question involved in this case is *res integra* in this court. It was expressly reserved for future adjudication in *Insurance Company* vs. *Eldredge* (102 U. S., 545), which went off on the ground of notice.

A desperate effort is made by the counsel for the appellees, in their brief, to establish the existence of an agency between Williams and the defendant Charles T. Davis, for the purpose of effecting the loan to the Sweets, and thereby to affect Williams with notice of the fraud on the appellees, as this man Davis was in conspiracy with the Sweets and Augustus Davis to cheat and defraud both Williams and the appellees. For this purpose much reference is made to the testimony of this Charles T. Davis, who, when asked by his own counsel if he was the agent of anybody but Sweet said he was not, unless it was Mrs. Sweet (Rec., p. 142). *The question* that evoked this answer *was then objected* to by the very counsel who are *now seeking to construct an agency out of the deposition of this same witness.* The counsel for the appellees seem to think that an agency must necessarily have existed between Davis and Williams, because the latter told the former that before he lent his money he must have Ashford's abstract of the title, and because he told Davis he must have the deed of trust put on record,

and that other things must be done which the borrower was to do before he could expect to get the lenders' money.

The idea of the counsel for the appellees seems to be that the only way in which Williams could have avoided having Davis imputed to him as an agent, was to *keep away from him while the preparations for the loan were making.* Any communication with Davis for the purpose of giving him full knowledge of what he, Williams, required to be done on the borrower's part, as precedent to the loan, were, in the viewof the counsel for the appellees, made at the peril of implicating himself in an agency with Davis. Such is the necessary result of the argument of the counsel of the appellees, as fully appears by the quotations from the depositions of Davis and Williams, relied on by them.

If, then, the contention on the part of the appellees is founded, it follows that communication with the agent of a third party touching a matter or negotiation previously opened to you by him is at the peril of making him your agent.

But the deposition of Mr. Williams, whose character and credibility no one challenges or dares to challenge, puts this question of agency beyond doubt. He says that Charles T. Davis informed him, Williams, he had a good loan of $5000 to offer, to be secured on unencumbered property; that he, Williams, agreed to make the loan on condition that "*it should be made to appear to my [his] satisfaction that there was no incumbrance on the property*;" that on its being so made to appear he loaned the money. He says he required an abstract of title from Mr. Ashford, which was furnished him, and that "there were no special circumstances connected with the loan other than these." (William's Dep. Ans. 7, R.; pp. 200–1.)

Williams says, on cross-examination, that he practiced law in Baltimore five years and in this city four; that he

prepared his answer in this case and that he had lent considerable money on real estate in this District (Dep. 36, R. p. 202). He says, on cross-examination, "*I gave no instructions to any one. I was requested to loan the money for a certain time, at a certain rate, and I gave no instructions in reference to it.*

He testifies that when he had the assurance of Ashford's abstract and that the deed of trust to secure him and the release of the antecedent trust were on record he gave Davis his check for the money, and that he considered the fact, that Davis had the custody of the note of Sweet and wife and the deed of trust to secure it, were sufficient to show that he had authority to receive the money, which was a just conclusion, as abundantly appears by the deposition of Edwin J. Sweet. (Rec., p. 212.) Williams says, also, that "according to my *universal and invariable* custom in making loans on real estate, I have always requested the attorney of the other party (*as Chas. T. Davis was in this instance*) to furnish me with such an abstract" (Ans. 153, R. p. 212).

But when we take into view the facts that Mr. Williams was bred to the law and practiced it some nine years, and his large experience in lending money on real estate security, nothing is more improbable than that he would have made such a man as Davis his agent.

The labored attempt of the counsel for the appellees to establish an agency between Charles T. Davis and Mr. Williams has led us to treat the point with more seriousness, now, than it has been deemed worthy of heretofore. It made no impression on the court below, either in the Special or the General Term. This is what the court, in General Term, say of it:

> "After the execution of this release, but before it was recorded, a negotiation was had with the defend-

ant, Samuel T. Williams, for a loan of $5,000, to be secured on the property described in the deed of trust and release above referred to, and a new deed of trust to secure the same was executed to the said C. T. Davis and R. K. Elliot. A good deal of testimony was taken on behalf of the complainants for the purpose of showing that Charles T. Davis acted in this negotiation as agent for Williams, or, at least, as the common agent of Williams and Mrs. Sweet; and upon this ground it was claimed that Williams was affected by Davis' knowledge that the release was fraudulent.

"It appears that the subject of a loan to Mrs. Sweet was first mentioned by Davis to Williams; that the release was exhibited to the latter by Davis as an inducement to the loan, and that Williams required Davis to have it recorded, and to furnish him an abstract of the title before he would make the loan. It is clearly shown that all of these steps were taken by Davis at Williams' instance, but this does not show that they were taken by him as Williams' agent, since they were precisely such steps as Williams would naturally require of Mrs. Sweet herself, if he had negotiated directly with her as principal. The facts are consistent with the theory that he regarded Davis as her agent; and, so long as they are so, we are not at liberty to infer that he intended unnecessarily to adopt him as his own agent."

It is gravely urged that the present is a contest between equitable claimants, standing on the same plane, and, consequently, that the appellees must succeed on the principle, *qui prior in tempore potior in jure.*

But this contention is wholly unfounded, for nothing is clearer than that Williams *bargained for, and actually obtained, the legal title,* and that, although it is in his trustees, *their seisin of it is his seisin,* which is what the court below held, in saying that the rule that ~~this~~ the law must prevail where the equities are equal amounted to this, only, "that if a *legal title must be gotten out of the way in order to give*

preference to one of two equal equities, a Court of Equity must withhold its hands, and must leave the matter as it finds it." Surely this effectually disposes of that contention.

It is to be remarked that the Court in General Term decided every point in the case in favor of Williams, except the one involving the contention of constructive notice.

Upon the whole case, therefore, it is respectfully submitted that the decree of the General Term must be reversed and that of the Special Term affirmed.

WM. A. MAURY,
Of counsel for the appellant.

17-478

IN THE

SUPREME COURT OF THE UNITED STATES.

NO. 209.

SAMUEL T. WILLIAMS, *Appellant*,

vs.

JACKSON BROTHER & CO., *Appellees*,

AND

NO. 482,

JACKSON BROTHER & CO., *Appellants*,

vs.

WILLIAM STICKNEY, *Appellee.*

Brief in behalf of Jackson Brother & Co.

JAMES S. EDWARDS,
JOB BARNARD,
Solicitors for Jackson Brother & Co.

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

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Statement.

These cases are here on appeals from a decree of the Supreme Court of the District of Columbia.

The firm of Jackson Brother & Co., complainants in the court below, seek relief in equity against the wrongful and alleged fraudulent release of a deed of trust given to secure the payment of certain promissory notes held by that firm. The litigation here is between this firm, Samuel T. Williams, and the representative of the estate of William Stickney, who has died since the appeals to this court were taken.

On or about the 1st of January, 1875, Mrs. Addie M. Sweet, then a married woman, purchased from the defendant, Augustus Davis, (the father of Charles T. Davis, one of the trustees who executed the release,) a certain lot of ground situate in this city, known as lot 49 of Augustus Davis' subdivision of lot 8, in square 513, with the improvements thereon, consisting of a new and commodious brick dwelling with all the modern improvements, for the sum of $10,500; and a deed was accordingly executed and delivered to her, whereby the property became vested in her as her sole and separate estate without the intervention of a trustee.

As a portion of the consideration for the conveyance of this property to her, Mrs. Sweet and her husband executed and delivered four certain promissory notes—three for the sum of $1,833.33 each, and one for $2,500, making an aggregate of $8,000: these notes are all dated January 1, 1875, and are payable to the order of the said Augustus Davis. Two of those for $1,833,33 were payable respectively in one and two years; the other, and the one for $2,500, were payable in three years after date. All of these notes bear interest at the rate of eight per centum, payable semi-annually.

By deed of the same date as the said notes, and as a security for the payment thereof, Mrs. Sweet and her husband conveyed this property to the said Charles T. Davis and William Stickney as joint tenants. By the express language, terms, and conditions of this trust deed, the trustees were only authorized to release the property from the operation of the lien thereby created, "*upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half-commissions, and expenses,*" at any time before the sale therein provided for.

These four promissory notes were duly endorsed, and

shortly after their date, and long before the maturity of either or any of them, were discounted by and transferred to the complainants, for full value, in the ordinary course of their business. The note first falling due was placed, by the complainants, in bank for collection, and was paid there at its maturity by Charles T. Davis, a member of the firm of A. Davis & Son, who were endorsers thereon. Since these notes came into their hands Jackson Brother & Co. have been, and now are, the *bona fide* holders and owners thereof. No portion of the principal of the three notes now held by the latter firm has been paid, and interest is due thereon from July 1, 1876.

Payment of the over-due note, held by Davis & Son, having been urged by that firm against the makers, an arrangement was entered into between Mr. Sweet, in behalf of his wife, and Charles T. Davis, (the latter as the then supposed holder of all of the notes, as he represented himself at the time to Mr. Sweet to be), some time between the months of June and September, 1876, whereby a new deal was to be made, these four notes and the trust to secure them were to be extinguished and cancelled by securing a new loan and through the execution and delivery by Mrs. Sweet, of certain other notes and trust deeds; two deeds of trust were accordingly executed by Mrs. Sweet; one to the said Charles T. Davis and the defendant, Elliot, to secure her note for $5,000, payable to the order of the defendant, Williams, in four years after its date, with interest until paid at nine per centum per annum, payable semi-annually; the other trust was to Charles T. Davis, as sole trustee, to secure her six other notes each for $530.26, all payable to the order of his father, Augustus Davis, respectively in six, twelve, eighteen, twenty-four, thirty, and thirty-six months after date. All of these notes, and the trusts to secure them, bear date September 27, 1876. The trust to secure the $5,000 Williams, note was left for record September 28, 1876; the other, the

day following. The aggregate of these notes was the amount then due from Mrs. Sweet on the purchase of the property, and, as before stated, was intended to take the place of the four original notes of January 1, 1875, which Davis claimed to hold, and to whom, as such supposed holder, Sweet had paid the interest up to that time.

That the trust to secure the Williams note might appear to be the first lien on the property, the defendant, Charles T. Davis, one of the trustees under the trust of January 1, 1875, prevailed on his co-trustee, the defendant, Stickney, to join with him in the execution of the release mentioned. This release bears date September 15th, 1876, was acknowledged on the 19th of the same month, but was not left for record until the same day and hour of the trust to secure the Williams' note, and was recorded in the same book—the trust deed immediately following the release. When this release deed was executed and recorded, three of the notes, secured by the trust it purports to release, were not due, and none of the notes were produced at the time the trust was discharged. It appears that Stickney hesitated at first in executing the release under the circumstances, but, after stating that he did not usually sign releases unless the notes were produced, marked "paid, and cancelled," he said that in this case he (Davis) should hold the release until the notes were paid or everything was all right. He finally executed it and delivered it to Davis.

In January, 1877, three of the notes for $530.26 each, secured by the trust to Charles T. Davis, left for record September 29, 1876, were delivered by said Davis to the defendant, the Citizens' National Bank of this city, as collateral security for the payment of a note of $1,000, discounted by said bank for the individual benefit of Davis, dated January —, 1877, and made by Charles T. Davis to the order of E. S. Blackwood, at — days, and are now held

by said bank. The other three Davis claims to hold. These six notes are not in controversy here. No effort has been made by the holders to retain their security against the trust deed of complainants.

The defendant, Williams, did not know Mr. or Mrs. Sweet, the makers of the $5,000 note, and had no correspondence or communication with either of them in relation to the loan. Charles T. Davis, who conducted the negotiation, was at the time a real estate agent and note broker, and Williams obtained his note from, and dealt exclusively with him,—Williams, having placed other loans, through Davis, as a broker, to a considerable amount. The consideration for this note was paid by Williams by his check drawn on the firm of Riggs & Co. *to the order of Charles T. Davis.* This check Davis endorsed and placed it on deposit with said firm, to his individual credit, on the day he received it, and appropriated the same, or the proceeds thereof, to his own exclusive use and benefit, without the knowledge, consent, or authority of either Mr. or Mrs. Sweet, neither of whom received a cent of the money which was intended as the consideration to Mrs. Sweet for the Williams' note left with Davis for the purposes mentioned.

At the time of the negotiation of the $5,000 loan, of September, 1876, from Williams, through Davis, and as a condition precedent to the loan, the former requested the latter to obtain, or furnish him, with a certificate by Mr. M. Ashford, a lawyer and examiner of titles, showing the condition of the title to the property, upon the security of which Williams was to loan his money. In pursuance of this request Davis obtained for Williams two certificates from Mr. Ashford, both of which are written on the same sheet of paper. These certificates read as follows:

> "I have examined the title to lot 49 of A. Davis' sub. of original lot 8, in square 513, and find the same good

in Addie M. Sweet, subject to a deed of trust to Chas. T. Davis and William Stickney, dated January 1, 1875, recorded January 14, 1875, lib. 776, fol. 48, to secure Augustus Davis $8,000, int. 8 per cent., which is the only lien or incumbrance, except taxes for 1875–'6.

M. ASHFORD,
Sept. 14, 1876."

"Since the above, the only change is: 1876, Sept. 28, release of trust above noted; 1876, September 28, deed of trust to Chas. T. Davis and Robt. K. Elliot, dated September 27, 1876, secure Samuel T. Williams $5,000, 4 yrs., int. 9 per cent. semi-annually.

M. ASHFORD,
Sept. 28, 1876."

Default having been made in the payment of the first semi-annual installment of interest on the $5,000 note of September 27, 1876, held by Williams, he directed the trustees, Charles T. Davis and Robt. K. Elliot, to sell the property and foreclose the trust; and they accordingly sold the same at public auction on the 17th of July, 1877, to the defendant, Blackwood, who, at the time, was a partner of Davis, one of the trustees, for the sum of $6,325.

By the terms of this sale a credit of $5,000 was to be given, payable in four years, with interest at the rate of nine per centum per annum, payable semi-annually, to be secured by a deed of trust on the property. These terms were complied with after considerable delay and trouble, and Blackwood gave his note for $5,000 to the order of the trustees who sold the property, as a part of the purchase money therefor. This note was endorsed over by the trustees, without recourse, to Williams, in payment of the note for the same amount, dated September 27, 1876, before mentioned; and thereupon the last-mentioned note was delivered up by him and cancelled. The bill avers that, contemporaneous with the execution and delivery of the last-

mentioned trust and of the deed from Davis and Elliot, trustees, to Blackwood, the latter, in pursuance of a secret understanding and ageeement with said Charles T. Davis, entered into at or before the sale by him and his co-trustee, executed and delivered a deed therefor, in fee, to the defendant, Ida S. Davis, the wife of the said Charles T. Davis, and that said deed is now held by her, or her said husband, but has not been recorded to complainants' knowledge. The complainants further charge, that the purchase of said property by said Blackwood at the sale made by said Charles T. Davis and the said Elliott, as aforesaid, was under and in pursuance of a secret arrangement entered into before and at the time of sale, by said Davis the said Blackwood and the said Sweet, to benefit the said Sweet and the said Charles T. Davis, and that the sale by the said Davis to Blackwood was, in effect, a sale to himself, and void; that the sale at the price stated was much less than the property was actually and fairly worth, and should be set aside.

Jackson, Brother & Co. had no knowledge of the sale by Elliot and Charles T. Davis under the Williams' trust, nor of the deeds from them to Blackwood, or from the latter to the wife of Davis, one of the trustees making the sale, until a short time prior to the institution of this suit.

The property in question is not of sufficient value to satisfy the claims of all parties interested.

The cause was first heard at a Special Term of the Court below before Justice MacArthur, who passed a decree, in substance, refusing to re-instate the complainant's trust as against the defendant, Williams; holding the trustees, Stickney and Charles T. Davis, responsible for executing the release without payment of the debt secured, and that they pay the amount of the notes held by the complainants; and appointed trustees to sell the property. This decree is set out in full in the record, (p. 240.)

From so much of this decree as denied to them the relief prayed, and as refused to set aside the deed of release mentioned in their bill, and to reinstate their deed of trust and give the same priority over the trust to secure the defendant, Williams, and as refused to pay the complainant's notes from the proceeds of the sale of the property before payment of the debt due to the defendant, Williams, the complainant appealed to the General Term of the court below. The trustees, Stickney and Charles T. Davis, also appealed to the General Term from that portion of the decree of the Special Term which adjudged that the complainants recover from them the amount due on the notes secured by the trust which they released.

The General Term decreed complainant's trust to be the first incumbrance on the property, and that it have priority over that of the defendant, Williams; that the notes held by the complainants be first paid from the proceeds of sale; and reversed that portion thereof which adjudged that the complainant recover from the defendant, Stickney, the amount due to them on the notes secured by the trust he and Davis released. (Rec., p. 244.)

From so much of this decree as reversed the personal decree of the Special Term against Stickney, the complainants appealed to this court; the defendant, Williams, also appeals from that portion of the decree which gives priority of lien to the complainants, and provides for the payment of the sum due to them before the payment of what is due to him out of the proceeds of the sale decreed to be made.

Argument.

The appellees in No. 209, and appellants in No. 482, contend—

First. That the decree of the General Term declaring that complainant's trust have priority over that of the dedefendant, Williams, should be affirmed.

Second. If this court be of opinion that the trust deed of the defendant, Williams, should have precedence over that of the complainants, then the personal decree against the defendant, Stickney rendered by the Special Term of the court below, should be affirmed here.

I.

The trustees had no authority to execute the release in question. The power vested in them to release is a conditional one; the condition being *payment of the debt secured.* **Without payment the release is void. The trustees' duty in this regard is purely ministerial; they have no discretionary powers whatever.**

That the complainants are the holders and owners of the notes secured by the trust deed in question, and that the trust was released without payment of the notes and without their authority, knowledge or consent, is clearly established and not controverted; the notes now unpaid have not been out of the custody of the complainants since they purchased them a few weeks after their date.

These complainants also held, as evidence of their security, the original trust deed to Davis and Stickney, an abstract of title showing this trust to be the first lien or incumbrance on the property, and a policy of insurance on the building.

(Rec., pp. 99, 100 and 122, and exhibits J. B. L., No. 1, J. N. O., No. 10, and J. N. O., No. 11, on pp. 132 and 195)

Mr. Justice MILLER, in delivering the opinion of this Court in the case of *McPherson* vs. *Cox*, 96 U. S., 404

where the rights, powers and duties of trustees under a trust deed, identical in its terms, were discussed and considered, says:

> "There is here no duty or obligation or right to do more than two things, namely, to make the release of parts or of the whole of the ground as the payments entitled the obligors in the bond to have them made, and to sell the land or parts of it as their failure to pay might justify; and in making such sales to receive and distribute the money as required. The bond was made payable to complainant, (the beneficiary or party secured), and she alone was authorized to receive the interest and to give a valid receipt for it. Payment to either of the trustees would have been no defence to a suit by Mrs. Cox, (the beneficiary under the trust.) Mr. McPherson will have and can have nothing to do, as trustee, which requires any personal intercourse with Mrs. Cox. Unless Ford wishes to pay part of the money and ask a release of part of the property, he has literally nothing to do, as trustee, until the bond is due. And in all that he may have to do as trustee his duty *is so merely ministerial and so clearly defined*, that he can do her no harm whatever."

Says the Court below, in the case of *Eldridge* vs. *The Insurance Co.*, 3 MacArthur, 301, (almost identical as to the matters in issue with the present case):

> "The trust deed to William H. Ward was of record, and it disclosed the interest of the *cestui que trust.* It was moreover, a naked trust, giving no discretion to the trustee, other than to execute the powers therein specified; one of these being the authority to release it upon payment of the indebtedness thereby secured. In this particular he was clothed with no discretion; *his only duty and power being to execute a discharge when the notes were paid.*"

The Eldridge case was brought here on appeal, and this court, through Mr. Justice FIELD, says:

"The deed of Coburn designated the notes and limited the powers of the trustee to release the property. He was in terms authorized to release and reconvey it only upon the full payment of the notes, and not otherwise. The deed showed the time the notes had to run, and that by their terms they were not then due. Unless paid at the time, or, what would be deemed equivalent, surrendered, the trustee had no authority to execute the release. It was not sufficient that the original payees of the notes joined in the instrument or consented to its execution. So far as they had parted with the notes, they were denuded of power over the subject."

102 U. S., 545.

Powers are strictly construed and must be precisely followed.

"The powers and duties of trustees necessarily vary with the directions, limitations and restrictions contained in the instrument under which they act. This creates and limits their authority."

2 American Law Register, 652.
Shellaber vs. *Robinson*, 97 U. S., 68,77.

"A trustee," says Chief Justice MARSHALL, "has no power which the deed does not expressly give."

Wallis vs. *Thorton*, 2 Brock., 422.

The authority granted to trustees, and its exercise, are matters which rest wholly upon the convention of the parties. They are matters of contract, not of jurisdiction. The authority to act is derived from the power.

Doolittle vs. *Lewis et al.*, 7 Johns. Ch. 45, 4 Gill, 394.

A purchaser of lands from a trustee, under a power, is bound to look for and to understand the extent of that power; *caveat emptor* applies—

2 Wash., (Va.) 70;
5 Cal., 417;
2 Fonbl. Eq., 152.

"Taking under the power, he is bound to see that its terms are complied with."

Ormsby vs. *Tarascom*, 3 Litt., (Ky.) 410.

"Those," says HARRIS, Justice, in *Powell* vs. *Tuttle*, 3 Comst., 396, "who are invested with the power of transferring one man's property to another must pursue their authority with precision, or what they do will be invalid."

"When the manner is particularly described in the deed it must be followed. A negative upon any other mode of executing the power is implied by the designation of a particular mode."

2 American Law Register, 714;

2 Perry on Trusts, § 511, *b*.

"The general rule is rigidly adhered to, that powers can be executed only in the mode, and at the time, *and upon the conditions* prescribed in the instrument creating the power or trust."

2 Perry on Trusts, § 511, *b*.

The person who creates the trust may mould it in whatever form he pleases. He may, therefore, determine in what manner, in what event, and upon what condition the trustees may execute its provisions.

When the power is to be exercised only upon some condition or contingent event the power cannot be executed except upon the performance of the conditions.

The performance of the conditions are precedent to the right to exercise the power and may be traversed, therefore the right to exercise the power must be shown.

2 Perry on Trusts, § 785.

So inflexible is this rule that it has been held "that if the deficiency of the personal estate or any other property is the condition upon which a power of sale is to be exercised

it is a *condition precedent* upon which the power is to arise, *and the purchaser must ascertain the right to exercise it.*"

2 Sugd. V. & P., 48; Hill on Trustees, 178.

The performance of conditions, formalities, and solemnities is required for the protection of those persons whose rights may be defeated by the exercise of the power, and to prevent the donee from acting with haste and without proper consideration.

Hawkins vs. *Kemp*, 3 East, 410;
Rex vs. *Anstray*, 6 M. & Sell., 324;
Holmes vs. *Coghill*, 7 Des., 506;
Day vs. *Thavaitts*, 3 Ch. Ca., 69, 107;
2 Perry on Trusts, § 511, *b*.

> "The authorities show clearly that the conditions and solemnities annexed to the execution of a power must be strictly complied with, however unessential they might otherwise have been; and their observance is indispensible, and can admit of no equivalent or substitution."
>
> 1 Texas, 226.

In 1 Burrow's Rep., 121, it is laid down by Lord Mansfield "that the intent of the parties who gave the power ought to govern every construction. He to whom it is given has a right to enjoy the full exercise of it. They over whose estate it is given have a right to say it shall not be exceeded—the conditions shall not be evaded: it shall be strictly pursued in form and substance; *and all acts done under a special authority, not agreeable thereto, nor warranted thereby, must be void.*"

> "An authority is to be strictly pursued, and any act substantially varying from it is void."
>
> *Nixon* vs. *Hyserott*, 4 Johns. R., 57.

"When a power is in writing, and subject to the inspection of the party, this he is presumed to have known, and no good reason exists for binding the principal beyond the scope of it. If the party neglect to call for the power, and judge for himself, it is his own fault."

Sandford vs. *Handy*, 23 Wend., 260.

"An agent, constituted for a particular purpose, and under a limited and circumscribed power, cannot bind his principal by any act beyond his authority."

Andrews vs. *Kneeland*, 6 Cowen, 354.

"The contract of an agent to be binding upon the principal must be within the authority conferred; and if the power of the agent be created by a written instrument, and that be known by the party with whom the contract is made, it must be strictly pursued and cannot be enlarged by evidence of usage.',

"It is a universal rule that in order to bind the principal upon a contract made by an agent, the contract must be within the authority committed to that agent, and that authority must be strictly followed. If the agent's acts vary substantially from his authority in nature, or extent, or degree, they are void as to the principal and do not bind him. When the agency is created or conferred by a written instrument and grows wholly out of it, the nature and extent of the authority must be ascertained from the instrument itself, and cannot be varied or enlarged by usage. The courts have never questioned the strict application of this rule where the agent is employed specially for any particular transaction. There, if the agent exceed his special and limited authority 'the principal,' according to Judge STORY, 'is not bound by his acts, but they become mere nullities so far as he is concerned.' This is particularly applicable where the agency is created by a written instrument, or authority known to the party dealing with the agent as the source of his authority, and directing and regulating its object, extent, and exercise."

Delafield vs. *The State &c.*, 26 Wend., 191.

See, also, *Stead's Executors* vs. *Course*, 4 Cranch, 403.

Says MARSHALL, Chief Justice:

> "The validity of the sale in controversy depends upon the authority of the collector to sell and on the fairness of the transaction. It would be going too far to say that a collector selling land, with or without authority, could, by his conveyance, transfer the title of the rightful proprietor. He must act in conformity with the law from which the power is derived, and the purchaser is bound to enquire whether he has so acted."

See, also, *Keane* vs. *Cannovan*, 21 Cal., 291;
Williams vs. *Peyton's Lessee*, 4 Wheat., 78;
Varick vs. Tallman, 3 Barb., 113.

So strict is the application of the rule that a valid subsisting power lies at the foundation of a purchaser's title, that it has been held, in cases of sales made by trustees or mortgagees with power of sale, that if the power has been extinguished by payment or otherwise, no title will pass at a sale under it, even to a *bona fide* purchaser.

Cameron vs. *Irwin*, 5 Hill (N. Y.), 272;
Deyo vs. *Van Valkenburgh*, *Ibid.*, 242;
Jackson vs. *Morse*, 18 John R., 441;
Ledyard vs. *Chapin*, 6 Port. (Ind.), 320;
Sherman vs. *Sherman*, 3 Port. (Ind.), 337;
Carpenter vs. *Longan*, 16 Wall., 271–4.

BRONSON, J., in *Wood* vs. *Colvin*, 2 Hill, 566, says:

> "The general rule is, that a purchaser under a power buys at his peril, and however innocent he may be we have not been referred to any case which holds that he can acquire a title without showing a valid subsisting power."

And because payment of the debt renders the instrument *functus officio*, and *ipso facto* extinguishes the power of sale, *a bona fide* purchaser takes no title even though there has

been no release, re-conveyance, or other discharge of the instrument of record.

2 Am. Law Register, 716, and cases cited.

It being clear, from the authorities cited, that a *bona fide* purchaser acquires no title at a sale by a trustee, authorized to be made upon default in payment of the debt secured as against the grantor in the trust who had paid the debt, on the ground that such purchaser is bound to ascertain *that the debt has not been extinguished*, it follows that whoever claims under a release, the authority for which is payment of the debt secured, is also bound to enquire *whether the debt has been paid;* and the signature of a payee of a negotiable instrument, secured by a deed of trust, is not sufficient evidence of such payment, especially when the notes are not due.

The defendant, Williams, has no cause to complain against the application of this rule, for the complainants' trust was of record before he loaned his money, and notice of the condition is brought home to him by the record, which disclosed a defeasible and qualified estate in the trustees. He was thereby put upon inquiry.

The purposes of the trust deed in question are apparent to every one. The sole object and intent of the parties executing it was to secure the payment, at maturity, to any *bona fide* endorsee of the notes representing the unpaid purchase money for the property described in the deed. A *bona fide* holder of any of these notes might well rest in absolute security under the protection of an instrument so carefully guarding his rights. It is not within the power of a trustee, acting fraudulently, or otherwise, to deprive him of his security without his consent.

If a lender of money or a purchaser finds such an unsatisfied trust deed as this on the record, and in order to perfect,

his title, undertakes to remove the encumbrance, he is bound to ascertain the actual owners of the debt, and to see to it that he finds the right parties.

Catherwood vs. *Burrows*, The Reporter, Vol. 7, p. 492;

Boyd vs. *Parker & Co.*, 43 Md., 182.

II.

The defendant, Williams, is chargeable with notice of complainants' equities.

It is not contended that Williams had actual knowledge that the notes secured by the trust deed of January 1, 1875, were held by the complainants, and were unpaid, when he loaned his money to Mrs. Sweet; but it is claimed in behalf of the complainants that he had notice of certain facts and circumstances before parting with his money, which imposed upon him the duty of further inquiry, which, if followed up by him with reasonable diligence, would have resulted in a discovery of the outstanding notes and the true condition of affairs. It is further insisted that Williams is chargeable with notice through Charles T. Davis, one of the parties to the fraudulent release, on the ground that Davis, through whom the $5,000 Williams' loan was negotiated, was the agent of the latter, or the common agent of both Williams, the lender, and Mrs. Sweet, the borrower; Davis at the time well knowing that the complainant's notes were unpaid and that there was no authority for the execution of the release in question.

a. WILLIAMS HAD ACTUAL NOTICE OF THE TRUST DEED TO SECURE THE NOTES HELD BY COMPLAINANTS.

This trust deed was duly recorded on January 14, 1875, and was a valid existing encumbrance on the property at the time Williams first entered into negotiations to loan

his money. Williams' attorney so reported in his certificate of title, September 14, 1876, pending the negotiation of his loan. This certificate gave the date of this trust deed, when and in what book and page recorded, the names of the grantors and the trustees, and the amount, and the name of the party secured. This certificate Williams attaches to his answer as an exhibit; and he testifies (p. 203), that he read this certificate, or abstract of title, before he handed his $5,000 check to Davis, which check, he states, he intended for Mrs. Sweet as the consideration for her $5,000 note delivered to him by Davis.

Having direct notice of the existence of this trust deed, the law charges him with notice of its contents, and of all the limitations, restricted powers and conditions therein contained. Also with notice of any and all facts which, on inquiry, suggested by its contents and prosecuted with due diligence, would have been disclosed. The contents of this trust deed were such that they imposed a duty on Williams to make inquiry; and, whatever puts a party upon inquiry amounts, in law, to notice. Had Williams pursued the inquiry, suggested by this instrument, with ordinary diligence and understanding, he certainly would have discovered the true state of affairs; his neglect, in this respect alone, is fatal to his claim of a *bona fide* purchaser.

The trust of January 1, 1875, to Davis and Stickney, given to secure the notes now held by the complainants, showed, upon its face and in the plainest language, that it was executed and delivered by the grantors, Mr. and Mrs. Sweet, to secure the payment, at maturity, of four promissory notes, all bearing the same date as the trust deed, payable, respectively, in one, two and three years; that these notes were all payable to the order of Augustus Davis, and that they were executed and delivered to him as the *deferred payments* on the purchase from him by Mrs. Sweet

of the property therein mentioned. The duties and powers of the trustees under this instrument are very clearly pointed out and defined, and free from any doubt or ambiguity. The scope and powers of the trustees are limited to but two purely *ministerial* acts, viz: *To release the property upon full payment of all of the notes and the interest thereon;* and to sell and convey in default of such payment.

The description of the notes in the deed of trust in question, showed that they were negotiable instruments; that at the time Williams was making arrangements to loan his money, *but one of the notes had matured.* Every opportunity was afforded him to ascertain the facts. The means of obtaining information were within his reach; it required scarcely an effort on his part to be fully advised in the premises. All of the parties capable of furnishing correct information were accessible. Mrs. Sweet, the maker of the note upon which Williams loaned his money, resided on the premises upon which the loan was intended to be secured; and Williams testifies that he went into the very house where she lived for the purpose of inspection before loaning his money, (p. 211); *yet he never spoke to Mrs. Sweet on the subject.*

The release of complainants' trust, although dated and executed some time before, was not left for record until the very instant the trust deed to secure Williams' loan was handed in to the recorder's office. Both were delivered at the same time—a suspicious circumstance of itself, and indicating to a prudent mind an inquiry as to the reason why, if the debt had been paid, it had not been placed on record before. What does Williams say on this subject? We quote from his deposition, (p. 219):

x-Int. 227. The paper you filed as a copy of Mr. Ashford's title, shows that the release of Stickney and Davis was recorded on the same day and contemporaneous with your trust. Do you know why it was not left for record or recorded before that day?

A. I do not.

228. Did you make any inquiry of any person in regard to the recording of this release?

A. I did not.

229. Was or were any note or notes purporting to be secured by the trust of January 1, 1875, to Davis and Stickney to secure $8,000 to Augustus Davis, as set forth in the copy of Mr. Ashford's abstract, filed with your answer, ever shown to you?

A. No such notes were ever shown to me.

230. Did you require the production thereof before you delivered your $5,000 check to Davis?

A. *I did not; simply relying on the certificate of title to prove to me that no encumbrance existed, which was all I desired to know.*

231. Had you, in fact, any evidence of the payment of the debt secured by the trust of January 1, 1875, to Davis and Stickney, before mentioned, when you delivered your $5,000 check to Davis, other than what was contained in Mr. Ashford's certificate of title?

A. I had not.

233. Did you require or demand any other or additional evidence in this behalf?

A. I did not.

That the means of knowledge suggested by this trust deed were within easy reach by Williams there can be no doubt. That had he pursued these means with ordinary judgment and diligence he would have ascertained who held the notes, and been advised of complainants' rights, is equally sure and beyond question.

In support of the principles contended for in this behalf, reference is made to the following authorities:

Cordova vs. *Hood*, 17 Wall., 1;
Shaw vs. *Spencer*, 100 Mass., 382;
Blaisdil vs. *Stevens*, 16 Vt., 179.
Wormley vs. *Wormley*, 8 Wheat, 421.

The case in 17 Wallace is particularly in point: The

purchasers from one Hood, the grantee, in a conveyance which had been duly recorded, reciting a consideration to be paid, claimed to be protected as purchasers for value without notice. Says Mr. Justice STRONG in delivering the opinion of the court:

"Scroggin and Hanna, the purchasers from Hood, are in no better position. They are not *bona fide* purchasers without notice. As we have seen, the lien for the purchase money was apparent in the line of their title. The deed from Shields to Hood informed them that the consideration was unpaid. It imposed upon them the duty of inquiring whether it remained unpaid when they were about to make their purchase. Wherever inquiry is a duty the party bound to make it is affected with knowledge of all which he would have discovered had he performed the duty. Means of knowledge, with the duty of using them, are, in equity equivalent to knowledge itself. Had inquiry been made of the vendor, it would easily have been ascertained that a portion of the purchase money remained unpaid." "The deed pointed to the person from whom purchasers from Hood were bound to seek information."

The case at bar is on "all fours" with that of *Cordova* vs. *Hood*. The defendant, Williams, claims under a release of a trust whereby it appears in express language that the purchase money for the property in controversy was unpaid, and that the notes now held by the complainants, *represented the unpaid purchase money*, and at the time of the pretended release, as shown on the face of the trust, *were negotiable and not all due*. This condition of affairs, a knowledge of which was brought directly home to Williams before he parted with his money, imposed a duty on him to make further inquiry, which, if followed up, would inevitably have resulted in a discovery of the notes.

Says Justice FOSTER, in delivering the opinion of the Supreme Court of Massachusetts in the case of *Shaw* vs. *Spencer*:

"Notice of the existence of a trust is, by all the authorities held to impose the duty of inquiry as to its character and limitations: and whatever is sufficient to put a person of ordinary prudence upon inquiry is constructive notice of everything to which that inquiry *might* have led."

In the case of *Blaisdil* vs. *Stevens*, cited with approval in 13 Allen, 50, the rule is stated as follows:

"If one have knowledge of distinct facts, affecting the title of land which he is about to purchase, he is not at liberty to close his eyes and then screen himself under a plea of ignorance of other facts connected with those facts already known to him, but he is bound in good faith to make reasonable inquiry and will be presumed to have done so, and will be affected with notice of all such facts as he *might* have learned by such inquiry."

"It is a well-settled principle," says SPENCE (2d vol. of his Eq. Jurisp., 756), "that whatever is notice enough to excite attention and put the party on his guard, and call for inquiry, is also notice of everything to which it is afterwards found that such inquiry might have led, although all was unknown for want of the investigation."

A party will sometimes be charged with notice because of negligence in not making proper inquiry. Mr. SPENCE defines negligence to be, in the legal sense of the term, "a disregard of some fact known to a purchaser, which, at least, indicated the existence of that fact, notice of which the court imputes to a purchaser."

Under the light of the authorities presented, it is insisted that enough appears by the record to charge Williams, in law, with notice of complainants' rights.

The contract, disclosed by the trust deed to secure the complainants' notes, was that the makers would pay the notes at maturity to any *bona fide* endorsee; that such endorsee could not demand payment thereof; nor could the makers pay the same before maturity, *without a new convention.*

Therefore any party claiming title, which necessarily involved a new convention, was bound to ascertain whether in point of fact any such convention was made between the proper parties.

b. DAVIS WAS THE COMMON AGENT OF THE SWEETS AND WILLIAMS WHEN THE LOAN BY THE LATTER WAS NEGOTIATED. DAVIS HAD ACTUAL KNOWLEDGE OF COMPLAINANTS EQUITIES, AND THAT THEIR NOTES WERE NOT PAID; AND, THROUGH DAVIS, WILLIAMS IS CHARGEABLE WITH THE SAME KNOWLEDGE.

To prove that Davis had knowledge that the complainants held the notes secured by the trust he fraudulently released, and of their equities in the premises, reference is made to pages 153, 154, and 159 of the record. On page 154, cross-interrogatory 115, he is asked the following question: "You have known, have you not, since the time you delivered these Sweet notes to Mr. Jackson up to the time of the institution of this suit that they held them?" To which he answered "*I did.*"

What is the evidence as to Davis' agency?

Mrs. Sweet, the maker of the $5,000 Williams' note of September 27, 1876, testifies (pages 55 to 57) that she does not know the defendant, Samuel T. Williams; that she never had any conversation with or communication with or from Williams, in respect of a loan by him of $5,000, or any other sum to be secured by a deed of trust on her property; that she did not receive, nor did any one for her, to her knowledge, receive any check or draft or any other order for money, payable to her order, or any cash for this $5,000 Williams' note; that she did not endorse any check or draft or any other order for money growing out of this transaction, and that she does not known, as a matter of fact, whether or not the payee, Williams, paid any consideration for said note.

Mr. Sweet also states in his deposition, that when this loan was negotiated he did not know Williams; that prior to its negotiation and final close he did not have any conversation or correspondence with the defendant, Williams, who loaned the money (p. 60); that no portion of the proceeds of the Williams' note was received by him or passed through his hands; that he did not, nor did any one for him or for his wife, to his knowledge, receive any check or draft or any other order for money payable to him or his wife's order, growing out of this transaction; neither did he nor his wife, to his knowledge, endorse any check or draft or other order for money growing out of this transaction (p. 85.)

Williams was asked (cross-interrogatory 161, page 213:

"Have you ever had any conversation with, or received any communication from, or written to, Mrs. Addie M. Sweet, in relation to this $5,000 note or the interest thereon?"

For answer, he says: "Never, in regard to that or any other subject."

He further testifies: "I never saw Mrs. Sweet write. I did not know her signature when I took this $5,000 note in September, 1876. I had never loaned money on deeds of trust, with promissory notes of her's, prior to this transaction. I did not know at the time I took this $5,000 note of September, 1876, through any information derived from her or her husband that she desired to borrow any money." (p. 213.)

This evidence establishes, beyond question, that Williams and the Sweets never met, had no conversation or correspondence with, and, in fact, did not know, each other when this $5,000 loan of September, 1876, was negotiated; and, therefore, and as a natural consequence, *the loan must have been negotiated or placed through the intervention of a third party.*

How did Williams know that a loan was desired by the Sweets? What does he say on this branch of the transaction—the initial step? We quote from his deposition, (p. 203.)

x-Int. 42. When was your attention first called to this loan, or to the fact that such a loan was desired?

A. It could not have been more than a week before I advanced the money. The precise time I do not remember; but it was but a few days before the money was advanced by me.

x-Int. 43. How was your attention first called to this application?

A. Charles T. Davis first mentioned it to me.

x-Int. 44. Where were you at the time?

A. In his office.

x Int. 45. How came you to call there?

A. *I had made several loans through him*; I had business with him at various times in reference to loans that I had made at his request; and it was one of the calls in reference to other business, probably, that I had with him—I do not remember at this moment what—when he called my attention to this loan which he wished me to make.

Williams thus explains Davis' first appearance, so far as he was concerned, in the matter of the $5,000 loan of September, 1876.

Davis' business and occupation at this time is established beyond question.

Sydney Y. Smith, a clerk in the employ of Davis, from August, 1874, to October, 1877, tells us (p. 38), that during the time he worked for him, Davis transacted business as a real estate agent and in the negotiation of loans. During this period he negotiated and procured loans on promissory notes other than his own; that he knew Davis was engaged in this business during the year 1676. The witness, Terry, also states (p. 54) that he knows Charles T. Davis, and knew him during the year 1876. During that year Davis was engaged in the business of real estate agent and note

broker; that he had transactions with Davis as a note broker during the year 1876. This witness was then asked the following questions:

Int. 5. Did you ever meet in Charles T. Davis' office Mr. Samuel T. Williams, or was a person ever introduced to you by that name by Mr. Charles T. Davis in his office?

A. I met a gentleman there and was introduced to him as Mr. Williams. I cannot swear to his christian name, but he was the man who made the $5,000 loan.

Int. 6. When was this, and for whom was this $5,000 loan negotiated?

A. It was in June, 1876. It was on my note.

Int. 7. From whom was this loan negotiated?

A. Samuel T. Williams.

Int. 8. By whom was it negotiated?

A. Charles T. Davis.

Int. 9. In what capacity did Charles T. Davis negotiate this loan?

A. As a note broker.

We here find Davis engaged as a real estate agent, note broker, and negotiator of loans, calling Williams' attention, while in the office of the former, to this application or desire by the Sweets for a loan of $5,000 on the property in controversy, with the additional circumstance before us that in the month of June of the same year, Williams had loaned Terry, through Davis as a broker, the sum of $5,000 on property nearly adjoining in the same square, and that Williams had made sundry other loans, through Davis, on real estate security, to other persons, aggregating, as Davis testifies (pp. 159, 167, and 168), with his loan book, containing the original entries of the loans before him, some eighteen or twenty thousand dollars.

Williams testifies—

"I examined the property upon the security of which I was going to loan the money. I was taken there by Charles T. Davis. Davis had promised me, *at my request*, to procure an abstract from Mr. Ashford. (p. 203.) I received

the papers, pertaining to the loan, at Davis' office. (p. 204.) These papers, when I last saw them, on the day I gave my $5,000 check, were in the possession of Davis, or his clerk. I did not go to the record office on the day I gave my check to Davis, to see whether the trust to secure my loan or the Stickney-Davis release was placed on record. (p. 205.) I received the receipt for the deed of trust from Davis on the same day I advanced the money, while I was in his office closing the transaction. (pp. 205, 206.) The papers I received from Davis at the time the negotiation was closed, were the abstract of title, or a copy of it, the receipt for the recorded deed of trust, the note, and a policy of insurance. (p. 207.) The trustees named in the trust to secure my loan, were Elliot and Davis. I selected Mr. Elliot; leaving the other to be selected by the other party. probably. I communicated my selection in this behalf to Davis. *I instructed him to insert the name of R. K. Elliot as one of the trustees under my trust. I gave him these instructions some time previous to the drawing of the deed.* (p. 208.) I did not call upon Mr. Ashford in person in reference to the examination of the title, or have any conversation with him about it. (p. 209.) I gave the sum of $5,000 for the Sweet note, by check. I delivered the check to Charles T Davis; it was made payable to his order. (p. 200.) This check was intended by me as payment to Mrs. Addie M. Sweet for her $5,000 note to my order. (p. 212.) I had no instructions or authority from Mrs. Sweet to deliver this check to Davis, or make it payable to his order. I had not, in fact, any evidence that Davis was the agent of Mrs. Sweet, or authorized to act for her in any manner, other than of his having possession of the trust and this $5,000 note. (p. 213.)

In Williams' deposition we find the following: (p. 214.)

x-Int. 174. You state that you required an abstract of title from Mr. Ashford?

A. I did.

175. To whom did you communicate your requests or instructions in regard to this abstract?

A. Charles T. Davis.

176. Was an abstract furnished you by Mr. Ashford, in pursuance of such instructions?

A. There was an abstract furnished, which I had in my possession, at the office of Charles T. Davis. The paper I filed as an exhibit with my original answer is a copy of the abstract so furnished, to the best of my knowledge and belief. I had this abstract in my possession, which was handed me by Charles T. Davis.

Williams further states—

The insurance of the buildings, on the lot upon which this $5,000 note was secured, was a condition precedent by me in the negotiation of the loan. *I communicated my request in relation to this insurance to Charles T. Davis.* (p. 215.)

On page 219 of the record, we find—

x-Int. 224. Up to the time of this transaction of September, 1876, you had explicit confidence in his (Davis') honesty and integrity, and fully trusted him in all the loans you had previously made him, did you not?

A. In answer I would say that I never had either explicit or implicit confidence in Charles T. Davis. I will add that I had full confidence in him on account of my knowledge or belief in the good character of his father who introduced me to him. I knew nothing of his character on any other ground, but I did believe him to be an honest man.

225. Had anything occurred prior to this transaction of September, 1876, to cause you to doubt his integrity or honesty in respect of any matters that he had transacted for you?

A. Nothing had occurred before that time to cause me to doubt him.

226. You trusted him the same and had the same confidence in his integrity and honesty in the negotiation of the Sweet loan, had you not?

A. I had entire confidence.

On page 220 of the record (Williams' deposition) we also find the following:

x-Int. 233. You say that your deed of trust was left in

your possession on September 28, 1876. From whose hands did you then receive it?

A. It was handed to me for perusal and examination by Charles T. Davis.

234. What did you do with it after it was left with you on this occasion by Charles T. Davis?

A. My recollection is that I returned it to him, *in order that he might send it to the record office to be recorded*, and that I received the receipt saying that the deed had been recorded the same day. I certainly knew that it had been recorded by the receipt from the record office, which was handed to me before I paid the money. I received the receipt for this deed of trust before I left Davis' office that day.

245. Prior to this transaction of September, 1876, how much money in the aggregate had you loaned in this District, through Charles T. Davis?

A. I am not entirely sure, but I know I have loaned $8,500, at his request, and to various parties employed by him.

Is it not clearly and most satisfactorily established by Williams' own deposition that Davis was his agent in the matter of the negotiation of this $5,000 loan? There must be an affirmative answer, even were we confined to the evidence just read; but we show further, by the deposition of Smith, a clerk in Davis' employ, when this loan was placed, that he, while in Davis' employ as a clerk, kept books, drafted deeds of conveyance, and copied papers for him. That he knows the defendant, Williams. Has seen him in the office of Davis several times. That he recollects drawing a deed of trust from Addie M. Sweet and her husband to secure a note to the order of Williams. Recollects drawing the papers in relation to the negotiation of a loan from Mr. and Mrs. Sweet, in September, 1876. Also, recollects Williams giving Charles T. Davis a check for $5,000 in September, 1876. Thinks that either before or after this transaction, in September, 1876, Davis did negotiate other loans with Williams.

The papers attached to the answer of Williams, and marked as Exhibit, S. T. W., No. 1, (being a copy of the certificate of title by Ashford,) is in his (Smith's) handwriting; that he made this copy at the request of Davis, while in his employ; that he does not remember hearing the conversation at the interviews or meetings between Williams and Davis during the period the negotiations for the $5,000 "Sweet loan" was pending; *they generally had private conversations.*

During these meetings he does not remember that any other person was engaged with them in the conversations. Davis generally or usually got him to prepare deeds of trust or other papers of that nature that Davis had been requested to have prepared. The preparation of the "Sweet trust" of September, 1876, was made in the ordinary course of his duties. Davis employed Mr. Ashford as an examiner of titles. Ashford examined nearly all, if not all of the titles for Davis, pertaining to real estate transactions and the negotiation of loans by Davis. The original deed of trust from Mr. and Mrs. Sweet to Charles T. Davis and Robert K. Elliot, trustees, to secure the $5,000 to Samuel T. Williams is in his (Smith's) handwriting. Davis became the agent of the Philadelphia Fire Insurance Company about July, 1876, and was acting as such when he (Smith) left.

From Davis' deposition we quote the following:

x-Int. 116. Mr. Williams, in his deposition, states that he required an abstract of title to this property from Mr. Ashford, and that he communicated this requirement to and so instructed you, and that an abstract was furnished in pursuance of such instructions. Is this true?

A. Yes.

x-Int. 118. He further states that, to the best of his knowledge and belief, the paper filed, as an exhibit with his original answer, is a copy of the abstract furnished. Is this true?

A. Yes.

119. Who drafted the five thousand dollar note, of September 27, 1876, to the order of the defendant, Williams described in the bill?

A. My clerk, Sydney Y. Smith.

120. Under whose instructions did he prepare it?

A. I don't remember.

121. Did you not furnish him with the data, or instruct him to prepare this $5,000 note?

A. I don't remember distinctly.

122. Was not Smith in your employ at the time?

A. Yes.

123. Who drafted the deed of trust to yourself and the defendant, R. K. Elliot?

A. My clerk.

124. Under whose instructions was it prepared and drafted?

A. I don't remember distinctly.

125. Who drafted the deed of release from yourself and William Stickney to Mrs. Sweet described in the bill?

A. That I don't remember.

126. Did not you or your clerk draft it?

A. I cannot say, as I don't remember.

127. Was not this release prepared or written by you or your clerk, Smith, in your office?

A. It may have been, but I do not remember distinctly.

128. Do you not know that this $5,000 note, the trust from Mrs. Sweet to yourself and co-defendant, Elliot, and the release from you and Stickney, as described in the bill, were drafted in your office under your instructions?

A. I have given my best remembrance.

129. Who drafted the deed from you and your co-defendant, Blackwood, of July, 1877, described in the bill?

A. I think my clerk.

130. Under whose directions or instructions did he prepare it?

A. I tell you I don't remember who prepared it. I may have written it myself.

131. Who drafted the trust deed from Blackwood to your partner and the defendant, Ashford, to secure the $5,000 note from Blackwood, made payable to you and your co-trustee, Elliot's, order, described in the bill?

A. I think my clerk did.

132. Who drafted or prepared the notes secured by that trust.

A. My clerk.

133. Were not all of the papers I have mentioned drafted in your office by you, or your clerk under instructions or directions from you?

A. I have given you my best remembrance to each of the several questions.

In the light of this evidence it would seem useless to read anything further to establish Davis' agency in negotiating the $5,000 loan, of September, 1876, for Williams We however, present to the court a few extracts more. from Davis' deposition, touching this question of agency which Williams is striving to get rid of.

x-Int. 164. Mr. Williams, in his testimony, says that previous to the negotiation of the $5,000 loan of September, 1876, he had made several loans through you; please state what was the character of the loans you had placed for him prior to the one of September, 1876?

A. I think eighteen or twenty thousand dollars.

165. Please state how Mr. Williams knew of this $5,000 loan.

A. Whenever a loan was offered, when I thought the security and the men were good, I generally would notify my friends, *or those with whom I was doing business*, or any one whom I thought likely was able and desired to make an investment, that I had such a place to invest money, and if they thought proper they would accept the loan. The first one who notified me of his acceptance was the one to whom the loan was given.

I think it was the early part of June, 1876, that Sweet desired to secure this loan, says Davis. (p. 160.) deposition.

x-Int. 172. Had Mr. Williams agreed to take the loan at this time?

A. I think not—that is, at the early stages of which I speak. I think *another customer of mine* would have taken it at that time, but owing to the delay *I invested the money elsewhere.*

175. Did you not request Mr. Williams to hold the money until the release could be obtained?

A. *I never requested or asked a customer* to hold his money one minute. If papers could not be closed immediately, or within a short time, the money was never held, as there are so many things in real estate transactions that are uncertain, and knowing this I did not request *my customers to hold money for the purpose of investing in real estate:* but if any other loans were offered they were closed.

194½. I wish you to state particularly, as near as you can, the time you first approached Williams, or spoke or wrote to him, in relation to this $5,000 loan, and all the circumstances connected therewith from that time to the payment and delivery of the $5,000 check by him to you.

A. I have tried to state fully all the circumstances, as are evidenced by my answers to your questions. I cannot state minutely every act or circumstance, *for the loan was simply negotiated as a large number of other loans were which passed through my hands.*

Here is proof conclusive that this fellow Davis negotiated this loan for Williams in the usual way, and in the ordinary course of his business—a business Davis had been engaged in for some time previous, on a large scale, keeping books containing, as he states, entries of the loans placed by him for Williams, and wherein we find entered, among others, this very $5,000 Williams' loan, as number 1,319. A copy of the entry is filed, marked Exhibit I. B. L., No. 4, (p. 196.)

From this testimony we find Davis drafting and preparing all the papers necessary to place this loan for Williams; obtaining, at Williams' request, an abstract of title to the property; inserting in the deed of trust the name of Elliot, as co-trustee, with himself *at Williams' direction;* attending to the insurance on the building as additional security for the loan; examining the records in the clerk's office to ascertain if any judgments appeared against Sweet; paying the taxes then due, and a lien on the property; placing the

trust deed to secure Williams' loan, and the fraudulent release simultaneously, in the recorder's office for record—Williams meanwhile remaining in Davis' office to receive the receipt for his trust deed—in short, doing everything necessary in behalf of Williams and for his supposed protection, not only in the matter of the Sweet's loan, but also in the matter of the new loan to Blackwood after the sale of July, 1877. If this does not establish an agency it is difficult to understand how an agent is created. Williams, through Davis, was obtaining, as he tells us, a good loan on property, as security, worth double the amount advanced, and with its benefits he must share the responsibilities incident to the transaction.

It lies not in the mouth of either Williams or Davis to say that the latter was not, for the purpose of this transaction, the agent of the former. Agency is a question of law, to be ascertained and determined by the acts and declarations of the parties.

It seems useless to further occupy the time of the court to sustain the claim we make that Davis was Williams' agent in the matter of this $5,000 loan. Davis' endeavors to shield himself from the odium surrounding this rascally transaction by introducing witnesses to prove that a broker is the agent of both parties in the negotiation of loans similar to the one in question, and that he, in the William's transaction, performed the usual duties and acted in the customary manner of brokers, negatives his own declaration, when first produced (ostensibly as a witness in his own behalf, but, in reality, to benefit Williams), that he was not Williams' agent.

In the leading cases where an agency has been declared to exist, so as to charge the principal with notice of facts within the knowledge of the agent, the evidence was of less satisfactory nature than that pre-

sented in the case at bar. In *Jennings* vs. *Moore et al.*, 2 Vernon, 609, one Blincorne, having notice of an incumbrance, purchased in the name of Moore, and then agrees that Moore shall be the purchaser, and he accordingly pays the purchase money. Though Moore did not employ Blincorne, nor know anything of the purchase till after it was made, yet Moore, approving of it afterwards, made Blincorne his agent *ab initio*, and therefore was held to be affected with notice to Blincorne. In *Brotherton* vs. *Hatt*, 2 Vernon, 574, the persons held to be agents for the purposes of notice were scriviners, who prepared all the mortgages. They kept an office, and their profession was to drive bargains, effect loans, and perfect securities. The court adjudged them to be agents, and that notice to them was notice to their principals. The reason for the decision was, that all the loans were effected by them at their office, and all the securities also; and from the nature of their employment the court decided them to be agents of each party in effecting the loans and the securities.

In the case of *Le Neve* vs. *Le Neve*, 2 Amb., 436, the facts were these: The defendant, Mrs. Le Neve, against whom the relief was sought, denied, in general, that she had any notice of the first articles and settlement, and claimed protection as a *bona fide* purchaser without notice.

She says—

"That the defendant, Norton, was so far from being employed solicitor for her, in transacting the business of marriage articles in settlement, that he had been, for a considerable time before, employed as attorney for the defendant, Edward Le Neve, her husband; that being, at the time of her marriage, concerned for her husband, she was thereupon induced to place confidence in him; and her husband assured her he would take care there should be a handsome provision made for her, and recommended Norton as a proper person to prepare the deeds whereby such settlement was to be made upon her, to which she consented;

and that Norton assured her that he had taken care to secure for her £150 a year by way of jointure, and did not then, or at any time before her intended marriage, give her any notion of any former settlement."

It was insisted by Mrs. Le Neve that Norton was not her attorney or agent, but her husband's, and that the attorney for one party having notice would not affect her with notice.

The Lord Chancellor:

"I am of opinion she has admitted enough on her side to make him attorney or agent for her. If she placed confidence in Joseph Norton, no matter on whose recommendation—if she relied enough on her husband to take his recommendation, it is sufficient; or otherwise, it would be mischievious and inconvenient if this court was to take into their consideration from whom the recommendation comes for in purchases, and more especially in mortgages, very frequently the same counsel and agents are employed on both side; and, therefore, each side is affected with notice as much as if different counsel and agents had been employed."

The Chancellor, in commenting on this case, refers to *Brotherton* vs. *Hatt*, and says:

"See how far this case goes. The same scriveners were witnesses, and engrossed all the securities, and even in the nature of agents for all the lenders, and very likely for the borrower himself; and notwithstanding it does not appear Mrs. Hatt had personal notice; yet notice to the agent is notice to the party, and, consequently, they that lend last must come last, having notice of what was before; and if any one, after notice, lend more money, although he should obtain the legal estate, yet he would, in equity, stand affected with notice, and be bound thereby."

See also the important case of *Kennedy* vs. *Green*, 3 Mylne & Keen, 699.

The evidence to establish the alleged agency of Bigelow in the cases of *Burnstine & Eldridge* vs. *The Conn. Genl. Life Ins. Co.*, recently before this court, was of a more unsatisfactory and indefinite character than that in the present case to show that Davis was agent for Williams. In the two cases mentioned, both Bigelow and the officers of the Insurance Company denied the agency, yet the court held Bigelow, under all the circumstances and the nature of the transaction, to be the agent of the company, and through him charged the company with notice of the prior equities, which were similar to this case, being fraudulent releases of trust deeds to secure money loaned.

CARTTER, Chief Justice, in the court below, in stating his conclusions in the Eldridge case, remarked: "That in the better of his opinion, Bigelow was to be regarded, for certain purposes of intelligence and communication, as the agent of the company, and, therefore, that whatever was communicated to him must be regarded as communicated to the company."

These remarks are particularly applicable to this case. In the Eldridge case, as in this, the principals never met prior to closing the negotiations for the loan.

It is quite immaterial whether Williams is chargeable directly, or through his agent, Davis, who acted for him in this transaction, with having a knowledge of the trust deed to secure complainant's notes. In either case he cannot hold against their prior lien or equitable title. Williams was equally bound to know the fact that the trustees, Davis and Stickney, were not authorized to discharge the incumbrance unless upon payment of the debt.

III.

This is purely a question between equitable claimants; and the rule in equity is, that other things being equal, he who is first in point of time has the prior right.

The money advanced by, and now due to, the complainants on the security of the property in controversy, is, at least, a third greater than that due to Williams. If the equities of the complainants are not superior they are, at least, equal to those of Williams.

As between merely equitable claimants, each having equal equity with the other, "he who hath precedency in point of time, hath the advantage in point of right."

Shiras vs. *Craig*, 7 Cranch, 48.

Where the title of both parties is merely equitable, and there has been no laches or neglect on either side, the first in point of time will prevail, and a plea that the subsequent purchaser gave value in good faith is invalid, because chancery is the only tribunal that can take cognizance, and if it remained neutral there would be a denial of justice.

Fitzsimmons vs. *Ogden*, 7 Cranch., 2;
Jones vs. *Jones*, 8 Simons, 633;
Ballard vs. *McCarty*, 10 Watts., 63;
Newton vs. *Newton*, 6 Law R. Eq., 141;
4 Law R. Ch. Appeals, 144;
Catherwood vs. *Burrows*, The Reporter, vol. 7, p. 492.

No laches or neglect are attributable to the complainants. When the fraudulent release was executed there had been no default in the payment of the note that had matured, nor in meeting the several semi-annual installments of interest on those not due. The release was executed and delivered in September, 1876, and interest on the notes then

held by the complainants had been paid to July 1, 1876; neither the interest or any portion of the principal of the debt was due until the following January. The fraud was perpetrated while the complainants were resting in apparent security. Davis selected an opportune time to consummate his rascally scheme to cheat and defraud the parties interested.

IV.

If one of two innocent persons must suffer by deceit, it is more consonant to reason that he who puts trust and confidence in the deceiver should be a loser rather than a stranger.

Williams reposed confidence in Davis, and through him placed his money. Had he dealt directly with Mrs. Sweet the fraud would have been avoided. Williams was obtaining a substantial benefit through this transaction. Through Davis he was securing a good investment. He was evidently seeking an investment and took advantage of Davis' position and facilities, as a broker, to loan his money, and used him as a means of communication with Mrs. Sweet; and so great was his confidence in him that he actually drew the check for the money loaned *payable to his order*, thereby placing it directly in his power to consummate the fraud.

The evidence of Williams' confidence in Davis is of a positive nature. In his deposition (p. 219), he admits that prior to the transaction of September, 1876, nothing had occurred to cause him to doubt Davis' integrity or honesty in respect of any matters he had transacted for him, and that he trusted him and had entire confidence in him in the negotiation of the Sweet's loan.

V.

Whatever may be the conclusion of the court in relation to the rival claims of the complainants and the defendant, Williams, as to priority of lien, it is clear that the trustees, Davis and Stickney, are jointly and severally liable for any loss resulting to the complainants through the execution of the fraudulent release.

It is not claimed that Stickney was a *particeps criminis* with Davis, but his gross negligence in executing this release in the manner and under the circumstances disclosed by the pleadings and the evidence, operates as injuriously to the complainants as if he had been a party to the fraud. His want of caution, and his confidence in his co-trustee was the immediate cause of the injury. By his negligence he placed it in the power of Davis to perpetrate the wrong.

In testifying as to what occurred in Stickney's office in relation to the execution of the release (p. 171), Davis says that Stickney remarked, that he did not usually sign releases unless the notes were produced, marked "paid and cancelled;" but that in this case, he (Davis) should hold the release until the notes were paid, or everything was all right. And on page 178 Davis further testifies that Stickney called Mr. B. P. Snyder and asked his opinion about signing the release, and that Snyder stated *it was best always to see the cancelled notes*, but after that Mr. Stickney, at his (Davis) request, signed the release.

Stickney knew perfectly well that he was executing a formal instrument purporting to be a release of a trust deed given to him in special confidence, and with certain well-defined and limited powers. He was also well aware that the execution and delivery of a release of the trust was predicated of payment of the notes secured, and that

the best evidence of payment, as he remarked at the time, was the presentation of the notes marked "paid and cancelled;" yet he not only, as the evidence discloses, never saw the notes or trust that he was releasing [for they were then in complainant's custody], but he affixes his signature to a paper wherein there is a written declaration that the debt secured had been paid, which he must have known was not the case, for he told Davis, when he signed it, "*that he* (*Davis*) *should hold the release until the notes were paid.*"

Had Stickney even required the production of the trust deed he would have ascertained that three of the notes secured, and constituting more than three-fourths of the unpaid purchase money for the property released, were not due and were negotiable instruments—a circumstance of itself sufficient to have placed him upon guard, and, with the exercise of ordinary prudence on his part, no injury would have resulted to any one. He omitted to do anything to protect the interests of his *cestui que trust*, and failed to execute the important trust reposed in him in the manner and form indicated and required by the deed; but, to the contrary, he executed a release in plain violation of the terms of the trust, upon the request of his co-trustee without even, so far as we can glean from the evidence, an assurance from him that the debt had been paid.

It was Stickney's duty to ascertain the actual facts, and not rely upon the bare assertion of his co-trustee, that he would see that everything was right. The general rule is, that if a trustee be guilty of any negligence, or want of reasonable care, he is liable to his *cestui que trust* for the injury resulting therefrom.

Notwithstanding the evidence against him, and the circumstances surrounding the execution of the release in question, Stickney makes no explanation of his acts in

the premises other than what he states in his answer, which, in substance, is, that satisfactory evidence was presented to him, at the time, that the debt secured had been paid. What the evidence of payment presented was, he fails to state or furnish.

In the execution of the release, under the circumstances, Stickney was guilty of a breach of trust, and he must be held accountable to the complainants for any loss.

In support of this proposition we refer to the following authorities:

Story's Eq. Jur., § 1,268, 1,271, 1,280;
Hill on Trustees, p. 310, 518–21;
Clough vs. *Bond*, 3 Mylne & Cr., 491;
Att'y Gen. vs. *Wilson*, 1 Cr. & Ph., 1, 27;
Cunningham vs. *Pell*, 5 Paige, 612;
Murch vs. *Cockrell*, 5 Mylne & Cr., 178;
Perry on Trusts, § 518, 419, 843–50.

It was contended in the court below, and may be urged here, that it is not competent to pass a personal decree against the defendant, Stickney, because of the want of proper averments in the bill, and of proper prayers for relief.

The bill charged in express language:

That Stickney is sued as well, *in his own right*, as a trustee under the deed of January 1, 1875. (Par. 2 of bill, Rec. p. 1.)

That the execution and the delivery of the release by Stickney and his co-trustee, was without the knowledge, or consent, of the complainants, and wholly unauthorized by them. (Par. 4, Rec. pp. 2 and 3.)

By these allegations, and the general tenor of the bill, Stickney is advised that he has injured the complainants, his *cestui que trust*, by an unauthorized and wrongful act,

and breach of trust, and for which he is sued in his own right, and relief asked against him through a general prayer.

He meets these allegations by an answer whereby he undertakes to justify his action in executing the release, and on this issue testimony is taken, upon due notice, which clearly shows gross negligence on his part, in the performance of the trust committed to him.

Under the general prayer, other relief may be granted than that which is particularly prayed for, if such relief be agreeable to the case made by the bill.

English vs. *Foxhall*, 2 Peters, 595.

Should the court conclude that the evidence makes a case for relief against Stickney, but not the case disclosed by the bill, it has the power to allow an amendment of the pleadings to correspond with the evidence, even at the hearing, if otherwise unable to do complete justice between the parties.

Neale vs. *Neale*, 9 Wal., 1.

The loss that must result to the complainants or to the defendant, Williams, is attributable directly to Davis and Stickney, the former through his fraud, and the latter through his gross neglect in executing the release. It is not inequitable to decree that they respond personally to the injured party.

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17-478

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 482. OCTOBER TERM, 1883.

JACKSON BROTHERS & CO.

vs.

WILLIAM STICKNEY.

Statement and Brief for Defendant and Appellee, William Stickney.

JOHN F. HANNA,
JAMES M. JOHNSTON,
Counsel of Wm. Stickney.

R. O. POLKINHORN, PRINTER.

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Statement and Brief for Defendant and Appellee, William Stickney.

On January 1, 1875, the defendants, Edwin J. Sweet, and Addie M. Sweet, conveyed certain real estate to the defendants, William Stickney and Charles T. Davis, *in trust*, to secure the payment of four certain promissory notes, executed by the said Edwin J. and Addie M. Sweet, and payable to the order of defendant, Augustus Davis.

This deed of trust contained the usual clauses, granting to the trustees the power to sell for non-payment of either of said notes, and the power to release upon full payment of the entire debt thus secured. (Rec., 8.)

Complainants, claiming to be the holders and owners for value of three of the notes referred to, have filed this bill to enforce, for their own benefit, the execution of the deed of trust by which the said notes are alleged to be secured. The bill of complaint shows, however, that the

proper land records contain an instrument, in the form of a deed of release, executed by the trustees named, and apparently discharging the deed of trust by which the notes held by the complainants were secured; but this deed of release is alleged by complainants to be null and void, both because the attempted exercise by the trustee of the power to release was *ultra vires*, and because Stickney's signature to this instrument was procured by the active fraud of the defendant, Charles T. Davis. (Bill, § 5, Rec., 3.)

The record further shows that the defendant, Williams, claims to have loaned the sum of $5,000 to the defendants, E. J. and Addie M. Sweet, and that this debt is secured on the property before referred to by another deed of trust, executed and recorded on a later day than the one under which complainants claim, but which is said by Williams to have been accepted by him because of the apparent release by Stickney and Davis, trustees, of the deed of trust first named. Williams claims, in effect, to be an innocent purchaser for value, and without notice of any defect in the release of the first deed of trust.

The Court below held that the deed of trust of January 1, 1875, to Stickney and Davis, trustees, was still the first valid and subsisting lien on the real estate referred to, notwithstanding the record of the instrument executed by Stickney and Davis, trustees, and in the form of a deed of release (Rec., 245); and directed that said real estate should be sold by trustees for the purpose of paying, first, the debt due the complainants, and next, the debt due to Williams.

From this decree Williams appealed. The complainants, Jackson Brothers, have also appealed, notwithstanding the fact that the decree appealed from is entirely in their favor and in accordance with the prayers of their bill of complaint.

The purpose of the complainants' appeal is, apparently, to procure a personal decree against the trustee, Stickney, in the event of their failing to maintain the priority of their deed of trust over that of Williams.

It is presumed that the decree desired by the complainants against Stickney is substantially that entered by the justice holding the special term, and which was subsequently unanimously reversed, on the appeal of Stickney, by the court in general term.

As will be seen from the record (240), when the cause was first heard in the special term the court refused to enforce a sale of the property, for complainants' benefit, under the deed of trust to Stickney and Davis; refused to set aside the deed of release executed by the said trustees; but decreed that, inasmuch as it appeared to the court that there was due to complainants, upon the promissory notes referred to, the sum of $6,166.66, with interest, and that the deed of trust to Stickney and Davis was fraudulently released by Davis and negligently released by Stickney, to complainants' prejudice, *therefore* complainants should recover, in this proceeding, from William Stickney, Charles T. Davis, Augustus Davis, Edwin J. and Addie M. Sweet, the said sum of $6,166 and interest, and that complainants should have execution thereof, as at law. (Rec., 240.) The court, in special term, further directed a sale of the property for the benefit of Williams, who was adjudged to be the holder of the first encumbrance thereon.

Points and Authorities.

It is submitted that it is not competent for this court to grant any personal decree against Stickney.

I.

Because such relief would not be justifiable under the pleadings.

An analysis of the bill will show that, as to the deed of trust of January 1, 1875, to Davis and Stickney, trustees, the only material allegations are that this deed was given to secure complainants' debt; that it empowered the trustees to execute a release on one contingency only, viz: the payment of the entire debt secured (Bill, § 3; Rec., 1, 2), and that the debt secured to complainants has not been paid (Bill, § 4; Rec., 2).

Complainants say, in their bill, that the deed of release by Stickney and Davis is null and void because Stickney was induced, by false and fraudulent representations, to execute it (Bill, § 5, Rec., 2); and because a release was *ultra vires*, the debt due to complainants and secured by the deed of trust not having been paid (Bill, § 5, Rec., 2, 3).

This deed of release is throughout the bill treated and designated as merely a "*pretended release.*"

Accordingly and in pursuance of the object of their bill the only specific prayers for relief, so far as Stickney is concerned, are the following:

Prayer 2 (Rec., 6), "That the "*pretended release*" by Davis and Stickney may be decreed to be null and void.

Prayer 4 (Rec., 6), That Davis may be removed from his trusteeship, under the deed to him and Stickney, and that a person may be substituted in his place (presumably to unite with Stickney in selling under that deed), *or* that the Court may foreclose the still subsisting lien in favor of complainants.

It will thus be seen that, in substance, this is a bill for the specific performance of the tripartite contract between E. J. and Addie M. Sweet, of the first part, Stickney and C. T. Davis, of the second part, and the beneficiary under the deed of trust, of the third part. This contract, evi-

denced by the deed of trust referred to, is, throughout the proceedings, treated by complainants as still subsisting, and both the power of sale and the power to release as still unexecuted.

It will be observed that Stickney has been made a party in order that the legal title, vested in him as trustee, might be divested by an execution of the still subsisting power of sale. (Rec., 6, 4th prayer) He is especially acquitted of any fraud by the averments of the bill. (Rec., 3, Bill § 4.) Except as above stated, no other averments relating to him are made in the bill; no other issues in which he is interested raised by the pleadings, and no other relief asked than that already mentioned.

Now the defendant is only called upon to meet the case made by the bill.

That the proof must conform to the allegations of the bill, and the decree of the court to the allegations and proofs, are elementary principles.

Boone vs. *Chiles*, 10 Peters, 209.

"It is certainly a correct principle that the Court cannot decree to any plaintiff, *whatever he may prove*, more than he claims in his bill. Nothing further is in issue between the parties." (*Simms* vs. *Guthrie*, 9 Cranch, 25.) If complainants had proved the material allegations of their bill; to wit, that the execution of the deed of release by Stickney was fraudulently obtained; that both of the trustees were without power to execute this release (Rec., 3, Bill, § 5); that Williams had notice of the defective release (Rec., 5, Bill, § 12); that the "pretended release" was therefore null and void, (Rec., 3, Bill, § 5,) and *that the original trust is still subsisting*, (Rec., 3, Bill, § 5; Rec., 6; Prayers, 2, 4,)—the court should certainly grant the relief asked by complainants. But the relief which the court is

now asked to grant necessarily involves a repudiation of the essence of these averments, which is, that the deed of trust to Stickney and Davis was never released. Complainants, in their bill, protest that the deed of trust has *never* been released. The court is now asked to assert that this deed *has* been released, and to award damages against the trustees *because* they released prematurely. These theories are obviously and necessarily inconsistent.

Not only are the allegations totally at variance with the theory on which the trustees are now sought to be held personally liable, but the bill contains no appropriate or sufficient prayers for relief.

All the prayers for specific relief are predicated on the continued existence of the deed of trust and the invalidity of the deed of release.

But the bill contains a prayer for general relief. It is insisted, however, that this Court cannot, in this case, enter a decree for damages against Davis and Stickney under the prayer for general relief.

Where the proper issues are distinctly raised by the pleadings, a court of equity will, sometimes, grant, under the prayer for general relief, other relief than that for which complainant specifically prays; but such relief must be agreeable to the case made by the bill, germane to the averments and prayers therein contained, and *ancillary* to the relief asked.

1 Daniel, Ch., Pr. (4th Am. Ed.) 381:
English vs. *Foxall*, 2 Peters, 611, 612;
Hobson vs. *McArthur*, 16 Peters, 195;
Colton vs. *Ross*, 2 Paige, 397;
Story, Eq. Plead., § 40 and cases, 1 Barbour Ch. Pr., 37.

The court will not permit a bill framed for one purpose to answer another.

(1 Daniel, Ch., Pr. 381 and cases cited *supra et infra.*)

Much less will the court, under the prayer for general relief, grant relief which is *inconsistent* with that for which complainant prays.

The relief granted under the prayer for general relief must be consistent *both* with that specifically prayed *and* with the case made by the will.

1 Barbour's Ch., Pr. 37;
Colton vs. *Ross*, 2 Paige, 396;
Chalmers vs. *Chalmers*, 6 H. & J., 29, 30;
Smith vs. *Smith*, 1 Iredell Eq., 85, 86;
James vs. *Bird*, 8 Leigh, 510, 513, 514;
Lloyd vs. *Brewster*, 4 Paige, 539, 540, 541;
Thomason vs. *Smith*, 7 Porter (Ala.), 144, 154.

Even where the averments of the bill would entitle the party to one kind of relief or the other, but not to both, the prayer for general relief should be *in the disjunctive.* If the complainant prays for particular relief *and* other relief in addition thereto, he can have no relief *inconsistent with such particular relief, although founded on the bill.*

Colton vs. *Ross*, 2 Paige, 397, 398.

The well recognized reason for this rule is that a court of equity will not permit a defendant to be taken by surprise by being called upon, at the hearing and for the first time, to resist a liability not asserted by the theory of the complainant's case, nor by any prayer for relief.

1 Daniel Ch. Pr. (4th Am. Ed.), 381.

Defendant, Stickney, comes directly within the reason of this rule.

There was such an entire absence of any evidence of an effort by the complainants to charge him in any manner prejudicial to his interest, that no argument was made in his behalf in the court, holding the special term, by the counsel who, at that time, had charge of his case.

The absence of all presentation of the case on the part of Mr. Stickney no doubt led that court into inadvertently entering a personal decree against him.

If this defendant had been advised by the bill of complaint that any relief was asked against him except the execution by him, as trustee, of the merely ministerial powers vested in him by the instrument already referred to, (*McPherson* vs. *Cox*, 96 U. S., 404,) he might have met complainants' case by a demurrer, or by a proper answer and proofs. As it is, however, defendant is called into court in a representative capacity and asked to specifically perform a contract alleged by the complainants to be still subsisting and unexecuted, but the court is asked, at the bar, to award damages against him *personally* and necessarily, on the theory that the deed of trust was *functus officio* and no longer subsisting.

Thomason vs. *Smith*, 7 Porter (Ala.), 144, 154.

This proposed decree is an abandonment of the complainants' allegations and is diametrically opposed to the case stated and the relief asked by them.

II.

But, even if the bill had contained appropriate averments as well as a specific prayer for relief against Stickney, it is still insisted that the proposed decree could not be granted.

In a proper case, the court will entertain a bill framed with a double aspect, and, failing the proofs authorizing one decree, will grant the alternative relief asked by complainants.

But this rule has its well-defined limits. In a bill framed with a double aspect, it is not permissible to state *inconsistent* cases and to ask in the alternative, the relief proper to each of the conditions set forth. The alternative statement must be the foundation of *precisely the same relief*.

Shields vs. *Barrow*, 17 How., 143, 144, and cases infra.

In a bill, filed to establish a right or claim under a title or contract *alleged to be subsisting*, there cannot also be embraced allegations and prayers for relief which are only consistent with the abrogation or non-existence of the same contract or title; and the converse of this is also true.

Shields vs. *Barrow*, 17 How., 133, 142, 143, 144;
Colton vs. *Ross*, 2 Paige, 397;
Lloyd vs. *Brewster*, 4 Paige, 539, 540, 541;
McBrayer vs. *Roberts*, 2 Devereux Eq., 77, 78;
Gunnell vs. *Cockerill*, 84 Illinois, 323.

The general principles that a court of equity cannot grant relief inconsistent with that asked for by complainant, and cannot award damages, have been applied with great strictness to bills filed for the specific performance of contracts.

It is well settled that an entire failure of title is necessarily an answer to a bill for the specific performance of a contract involving a conveyance of title by defendant.

So, also, it is well settled that when defendant, before bill filed, disables himself from performing his contract, and the complainant knows of that fact before he commences

suit, the bill will not be retained for the purpose of awarding damages, but will be dismissed.

Kempshall vs. *Jones*, 5 Johns. Ch., 194 and 195;
Moss vs. *Elmendorff*, 11 Paige, 277, 278, 280, 287, 288, 289;
2 W. T., Ld. Cas. Eq., 1,152.

The case at bar comes directly within the principle last cited.

III.

Complainants' suit against Stickney thus resolves itself into a mere claim for damages for breach of contract, and complainants' remedy is, under such circumstances, by suit at law.

It is not suggested by appellant, in his answer, that complainants' remedy is at law, for the reason that the bill did not intimate that any relief was asked against him, except a decree that he sell the property.

The court will, however, at the hearing, and *sua sponte*, take notice of this defense.

Parker vs. *Woolen Co.*, 2 Black., 545;
Baldwin Ct. Ct. Rep., 411, 412, 416;
Sullivan vs. *Portland R. R.*, 94 U. S., 811.

IV.

Granting the improper release of the deed of trust by Stickney and Davis, trustees, there were two remedies open to complainants. The one was to disavow the tortious act of the trustees, and to pursue the trust property; the other was to sue the trustees, at law, for damages occasioned to plaintiff by this breach of trust.

Either remedy was open, but as the rights enforced in one form of remedy are inconsistent with those enforced in the other, both remedies cannot be pursued simultaneously. In such cases the *cestui que trust* must *elect* which course to pursue.

Oliver vs. *Piatt*, 3 How., 333, 401;
Hill on Trustees, *522, top page 785, note 1.

After his election, he is bound, and cannot resort to the other.

Fennemore vs. *U. S.*, 3 Dallas, 363, 364;
Lloyd vs. *Brewster*, 4 Paige, 539, 540, 541;
Murray vs. *Lyburn*, 2 Johns. Ch., 442;

The complainants disavowed the act of the trustees and elected to pursue the trust property in the hands of Williams. They cannot, at the same time, ask that damages be awarded against the trustees for a breach of trust. The latter demand would operate as a ratification of the act of the trustees and as an admission of Williams' title.

Much less can the court annul the election made by complainants because of their mere request at the argument.

As an illustration of the evil and inequitable consequences to the trustees from allowing them to be charged with damages at the argument, and after they have been lulled into supposed security by the condition of the pleadings and the state of the evidence, attention is called to the fact that there is nothing in the case to give to the court a proper measure of damages. The acceptance of the trust would not make the trustees guarantors of the sufficiency of the security or of the ultimate payment of the debt. The value of the property is not put in issue by the pleadings, but the court directs the trustees to pay the debt, notwithstanding this fact.

It does not seem proper or necessary to exhibit any reasons why the trustee, Stickney could not be held personally liable even if an appropriate action should be instituted against him.

It is respectfully submitted, however, that in no view of the ~~pleading~~ case, can any personal decree be entered against this appellee.

Pending

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JAMES M. JOHNSTON,
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